

House Committee On Financial Services, Subcommittee On T..., sked

May 1, 2017 12:00PM ET

(CORRECTED COPY: CORRECTS SPEAKER ID)

TRANSCRIPT

April 27, 2017

COMMITTEE HEARING

REP. STEVE PEARCE

CHAIRMAN

HOUSE COMMITTEE ON FINANCIAL SERVICES, SUBCOMMITTEE ON TERRORISM
AND ILLICIT FINANCE

WASHINGTON, D.C.

HOUSE COMMITTEE ON FINANCIAL SERVICES, SUBCOMMITTEE ON TERRORISM AND
ILLICIT FINANCE HEARING ON SAFEGUARDING THE FINANCIAL SYSTEM FROM
TERRORIST FINANCING

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HOUSE COMMITTEE ON FINANCIAL SERVICES, SUBCOMMITTEE ON

TERRORISM AND ILLICIT FINANCE HEARING ON SAFEGUARDING THE
FINANCIAL SYSTEM FROM TERRORIST FINANCING

APRIL 27, 2017

SPEAKERS:

REP. STEVE PEARCE, R-N.M.

CHAIRMAN

REP. FRENCH HILL, R-ARK.

REP. BRUCE POLIQUIN, R-MAINE

REP. ROBERT PITTENGER, R-N.C.

REP. KEITH ROTHFUS, R-PA.

REP. ROGER WILLIAMS, R-TEXAS

REP. TED BUDD, R-N.C.

REP. DAVID KUSTOFF, R-TENN.

REP. WARREN DAVIDSON, R-OHIO

REP. TOM EMMER, R-MINN.

REP. MIA LOVE, R-UTAH

REP. LUKE MESSER, R-IND.

REP. SCOTT TIPTON, R-COLO.

REP. LEE ZELDIN, R-N.Y.

REP. JEB HENSARLING, R-TEXAS

EX OFFICIO

REP. ED PERLMUTTER, D-COLO.

RANKING MEMBER

REP. KYRSTEN SINEMA, D-ARIZ.

REP. JIM HIMES, D-CONN.

REP. DAN KILDEE, D-MICH.

REP. BILL FOSTER, D-ILL.

REP. JOHN DELANEY, D-MD.

REP. VINCENTE GONZALES, D-TEXAS

REP. JOSH GOTTHEIMER, D-N.J.

REP. RUBEN KIHUEN, D-NEV.

REP. CAROLYN B. MALONEY, D-N.Y.

REP. JUAN C. VARGAS, D-CALIF.

REP. MAXINE WATERS, D-CALIF.

EX OFFICIO

WITNESSES:

JAMAL EL-HINDI,

ACTING DIRECTOR,

FINANCIAL CRIMES ENFORCEMENT NETWORK,

TREASURY DEPARTMENT

PEARCE: The Subcommittee will come to order. Without objection the Chair is authorized to declare a recess of the Subcommittee at any time.

Members of full committee who are not members of the Subcommittee on Terrorism and Illicit Finance may participate in today's hearing. All members have five legislative days within which to submit extraneous materials to the chair for inclusion in the record.

This hearing is entitled Safeguarding the Financial System from Terrorist Financing. I now recognize myself for five minutes to give an opening statement.

Today, most of us are very fortunate to live in a modern and secure -- to have a more modern and secure means of storage for our hard-earned money. Unfortunately, so do terrorist cartels and other criminals around the world. And in every evolving world, this is a driving mission of our subcommittee.

How can we continue to provide safety and security in our markets that American families have come to expect while rooting out the bad actors in the system? What actions is the nation taking to ensure that the markets is for legitimate users? What happened to our current AML/CFT structures working and what needs improvement?

Today's hearing is the first in a series the subcommittee will hold in the Bank Secrecy Act in the regulatory structure the United States has in place to combat money laundering, terrorists financing and other illicit financing activities. It is only fitting that the Subcommittee begins its work by examining the role and the function of the Financial Crimes Enforcement Network more commonly known as FinCEN; established in 1990 by the Secretary of Treasury, FinCEN was upgraded to official bureau status in 2002 with the passage of the Patriot Act.

The bureau is not only the primary regulator of the BSA, but it also acts as United States Financial Intelligence Unit, the FIU. FinCEN's mission is to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection analysis and dissemination of financial intelligence and strategic use of financial authorities from the most traditional forms of financial transactions to the ever evolving world of financial technology. It is essential that our nation has an efficient, effect and modern set of rules and regulation to safeguard our nation's financial system.

This hearing starts the conversation, we ensure -- and ensures our subcommittee is taken pragmatic and complete look at laws regulations we currently have in place. I thank our witnesses for being here today and look forward to the conversations to come.

With that, I'll now recognize the gentleman from Colorado for five minutes for an opening statement.

PERLMUTTER: Thanks Mr. Chair for holding this meeting so our subcommittee can design policies to update, modernize and strengthen the Bank Secrecy Act.

FinCEN plays a critical role in safeguarding our nation's financial system through the collection and analysis of suspicious activity reports and currency transaction reports. In fact, FinCEN has collected over \$200 million filings. The U.S. continues to be the financial capital of the world whereby essentially all payments move through or touch the United States financial system. Therefore the U.S. plays an important role in reducing the threat of terrorism and disrupting illicit and illegal financial flows.

So, it's important we evaluate how our current regulatory regime is functioning, what's lacking or needs updating, how we can better strike a balance between law enforcement and civil liberties, and how we can build in efficiencies without overburdening our financial institutions.

I want to thank you, Mr. El-Hindi for your testimony today and not seeing the...

PEARCE: If you'll hold here, let me yield one of my minutes to...

PERLMUTTER: OK.

PEARCE: ... Mr. Pittenger and then give us his second there to...

PITTENGER: All right, I'll...

PEARCE: Mr. Pittenger is recognized one minute.

PITTENGER: Thank you Mr. Chairman, thank you Ranking Member Perlmutter for organizing such an important meeting. So, it's a timely meeting to meet with our Financial Crimes Enforcement Network, Director El-Hindi, thank you for your excellent service and your friendship, and thank you for lending your time for our subcommittee today.

Earlier today, FinCEN associates of Mr. El-Hindi joined our subcommittee members and staff, a round table meeting with several major financial institutions to discuss the importance of information sharing as a tool to combat terror in finance. Specifically, we were discussing our Section 314 of the Patriot Act can be codified to improve the information sharing process for financial institutions. Information sharing for financial institutions is a critical component of our domestic capabilities to stop the flow of illicit funds to support terror both domestic and abroad.

Director El-Hindi, thank you for your service. I look forward to hearing your testimony. I yield back.

PEARCE: The gentleman yields back and...

PERLMUTTER: I'll yield back the balance of my time back to the chair.

PEARCE: OK, and when we get the opportunity, we'll try to recognize that. Today, we welcome the testimony of Jamal El-Hindi who has served since May, 2015 as deputy director of Financial Crimes Enforcement Network or FinCEN; a bureau of the Treasury Department.

Mr. El-Hindi has served at FinCEN in various positions since June of 2006. Prior to joining FinCEN, Mr. El-Hindi served as the social director for the program and policy and implementation of Treasury's, Office of Foreign Assets Control or OFAC.

Mr. El-Hindi first joined Treasury in December 2000 in the Office of General Counsel and served as an associate at Patton Boggs in Washington D.C. before his time. Mr. El-Hindi graduated from the University of Michigan Law School, also received a Master of Arts in Modern Middle Eastern and North African studies from the University of Michigan. A diploma in international relations from the London School of Economics and Political Science and an undergraduate degree in journalism from the University of North Carolina.

Mr. El-Hindi, you'll now be recognized for five minutes to give an oral presentation of your testimony.

Without objection, your written statement will be made part of the record and recognizes the gentleman from Colorado.

PERLMUTTER: Thanks Mr. Chair, I noticed the Ranking Member has just joined us and if I can add to that...

PEARCE: Yes...

PERLMUTTER: Anonymous consent to...

(CROSSTALK)

PEARCE: Yes, the gentleman is recognized to yield time to the gentlelady from California. Mr. El-Hindi, if you'll suspend here for a second.

PERLMUTTER: I'd like to yield to the gentlelady from California for her statement.

WATERS: Thank you very much, I appreciate your consideration. Thank you Mr. Chairman. One of the key issues this subcommittee will be looking at is the adequacy of current information, sharing authorities and the degree to which they strike the right balance between security and civil liberty concerned.

Last Congress, we heard from a number of experts and administration officials who spoke to the benefits and efficiencies that would accrue from increased information sharing between financial institutions and the government as well as financial institutions themselves. But I would also like to note that nearly every expert who spoke in favor of improved information sharing also acknowledged that these efforts must be cognizant of the need to protect privacy and civil liberties.

So, Mr. Chairman, as we explore legislative efforts to clarify current authorities or otherwise enhance information sharing, I strongly believe that we have a responsibility to solicit views from all interested stakeholders, and we need to hear and discuss these views and concerns in a public setting such as this hearing today and not only in private meetings.

I'd also like to touch upon another important issue, which is the gaping hole in our anti-money laundering framework with respect to the real estate sector. While I appreciate Mr. El-Hindi that written testimony note, the quote, "Outstanding concerns," end quote, that FinCEN has had with the money laundering risk in real estate. I must say that I find it disturbing that FinCEN continues to largely exempt the real estate sector from even the most basic anti-money laundering requirement, given that high-end U.S. real estate is a key sector used by corrupt foreign leaders to have traffickers and other criminals to launder illicit money.

I believe FinCEN should take more urgent action to address these risks nationwide and on a permanent basis. And with that, I yield back the balance of my time, and thank you very much.

PEARCE: I yield back, thank you. The gentleman yields back, Mr. El-Hindi, I would recognize you for five minutes. If you can turn on your microphone there.

EL-HINDI: (OFF-MIKE) Sorry. Better? OK.

PEARCE: Yes.

EL-HINDI: OK, Chairman Pearce, Vice Chairman Pittenger, Ranking Member Perlmutter and distinguished members of the subcommittee, thank you for inviting me to appear before you today to discuss the role of the Financial Crimes Enforcement Network in collecting, analyzing and disseminating Bank Secrecy Act data. I appreciate the Subcommittee's interest in FinCEN's mission and your continued support of our efforts.

My oral marks are brief, I am submitting more comprehensive written statement. FinCEN as we are commonly known is a Treasury Department bureau charged with safeguarding the financial system from illicit use, combating money laundering and promoting national security through the collection, analysis and dissemination of BSA information and the strategic use of our authorities. We are one of five components reporting to the Undersecretary for Terrorism and Financial Intelligence collectively focused on the Treasury's mission in this area.

FinCEN served two roles. First, as the financial intelligence unit for the United States. We collect, analyze and disseminate financial intelligence to help fight money laundering and the financing of terrorism.

Second, we are the lead regulator for the federal government with respect to anti-money laundering and countering the financing of terrorism also known as AML/CFT. FinCEN's ability to work closely with regulatory law enforcement industry and international partners promotes consistency across our regulatory regime. In short, we strive for responsible use of financial information for greater security and integrity in the U.S. financial system.

The Bank Secrecy Act is the primary federal anti-money laundering law. It requires a broad range of U.S. financial institutions to establish anti-money laundering programs, maintain records and provide reports to FinCEN. The majority of BSA data FinCEN collects comes from two reporting streams. Financial institutions must file currency transaction reports known as CTRs with FinCEN for cash transactions totaling more than \$10,000.

They must also file suspicious activity reports known as SARs to report suspected illicit transactions. The objective reporting in CTRs and the subjective reporting in SARs are both critically important. They provide a wealth of potentially useful information to FinCEN and other agencies working to detect and prevent money laundering other financial crimes and terrorism.

Thanks to funding from Congress, FinCEN has successfully completed an information technology modernization program in 2014. Updating the process of collecting and analyzing and disseminating BSA data. FinCEN receives an average of 55,000 new financial institution filings each day. These filings come from more than 80,000 financial institutions and 500,000 individual foreign bank account holders through FinCEN's modernized e-filing system.

FinCEN maintains over 200 million of these BSA filings in our database. FinCEN makes this information available to more than 10,000 law enforcement and other government users through a search tool designed to meet their specialized needs. We call it FinCEN Query.

Our users, internal and external, perform approximately 30,000 searches of the data per day. E-filing has streamlined the reporting process for financial institutions and individual filers and has significantly improved users ability to exploit BSA data by making it more accessible and searchable.

The protection of the sensitive information received is a critical part of our mission. FinCEN safeguards BSA data through a continued process of reviewing IT security measures and procedures. Adjusting the current and emerging risks and ensuring that security is a consistent requirement considered throughout the life cycle of each system.

FinCEN's systems are accredited to high federal information security management levels and employs strong security measures such as two-factor authentication, encryption and activity monitoring to protect BSA data.

FinCEN works with others in the Department of Treasury and the Department of Homeland Security in its focus on cyber security within the general context of security operations and litigation activities. FinCEN delivers BSA information and related analysis to law enforcement, regulatory, foreign and private sector partners following a five stage cycle.

This cycle involves one, collection; two, data processing and exploitation; three, analysis; four, dissemination; and five, the direction of future BSA collection efforts. In the first stage of the cycle, FinCEN not only collects the types of reports I mentioned previously, such as SARs and CTRs, but also has the ability to collect other data. FinCEN can proactively target certain financial intelligence for collection using a variety of authorities and special measures that might involve focus on particular areas of financial institution.

Data processing and exploitation is the second stage of the cycle. With approximately 55,000 filings per day, advanced technology solutions are needed to review, analyze and quickly disseminate time-sensitive information. To combat our most significant money laundering and terrorist financing threats, FinCEN employs automated business rules to screen filings on a daily basis and identify reports that further review by analysts.

For the analysis and dissemination stages of the cycle, the third and fourth stages, over the past few years we have consolidated our analytic capabilities and expanded the scope of our work to create products that address critical priority threats for our stakeholders including the financial industry. With respect to dissemination in particular, financial intelligence is most effective when information flows in both directions between the public and private sectors. FinCEN is a critical hub between financial institutions, law enforcement, regulators and international colleagues. Providing information back to the financial industry based on our analysis of their reporting is a force multiplier.

One of the tools FinCEN uses to disseminate information to industry is our Financial Institution Advisory Program. FinCEN can issue public and non-public advisories to alert financial institutions of specific illicit finance risks. Advisories often contain illicit activities topologies, red flags to facilitate monitoring and guidance on complying with FinCEN requirements.

In addition to close collaboration with domestic partners, FinCEN works to establish and strengthen mechanisms for the exchange of information globally. We engage with, encourage and support international partners to take steps to strengthen their own regimes. Much of this involves FinCEN's interaction with other financial intelligence units. FinCEN and most other FIU members are -- most other FIUs are members of the Egmont Group, through which we collectively service conduits for information requests from each other's law enforcement agencies.

The fifth and final stage of the intelligence cycle involves using everything we've learned to help inform future, planning and direction. Once threats and vulnerabilities have been identified, FinCEN can adjust the regulatory framework protecting the U.S. financial system.

FinCEN uses its regulatory rule-making authority among other things to find the reporting that financial institutions and others must provide. These rule-making activities together with the special information collection and advisories I previously mentioned, expand or improve the information that FinCEN collects. The dove-tailing of this final stage with the collection I outlined as the first stage confirms the iterative and cyclical nature of financial intelligence activities.

I'll conclude by noting that the AML/CFT landscape is complex and dynamic. It requires ongoing adaptation by FinCEN and our many partners. As we have to adjust to every revolving threats, we will continue to use the tools that are at our disposal to collect financial intelligence information, analyze it and deploy in support of our mission to safeguard the system from illicit use and promote national security.

On behalf of all the hardworking and dedicated FinCEN staff, I want to thank you again for the opportunity to testify today and I look forward to your questions.

PEARCE: Thank you, Mr. El-Hindi. We are now proceeding to committee questions, the Chair now recognizes himself for five minutes.

Mr. El-Hindi on page three, you talked about the number of filings each day and those numbers seem very large. Of those filings, which ones actually turned into actionable information? Just roughly.

EL-HINDI: Well, in terms of trying to associate each filing with a particular action, that's a little bit difficult. I realize that the number of filings that we have is large. But you have to understand how it's used.

The filings could be a tip in and of themselves, alerting law enforcement to something that they hadn't known before. They can be used to expand law enforcement investigations. They're also used to identify trends in terms of what is going on, in terms of the financial sector and new methodologies with respect to illicit activity.

PEARCE: Yes, if I could change the kind of direction we're going, how many people do you have assigned to...

EL-HINDI: Oh.

PEARCE: ... to review these reports?

EL-HINDI: Well, at FinCEN, we currently have on staff, a hundred -- sorry, 280...

PEARCE: I'm not asking the number on staff, I'm asking the number of people who are directed to this? Surely, we got some people that answered the mail, and that answered the phone to just walk in traffic so not everyone of your people. How many are assigned to go through the 55,000 new filings every day?

EL-HINDI: At FinCEN, we have, you know, an intelligence division staff of approximately 70. But keep in mind because we have 10,000 other users of the database throughout the government, there are others that are also looking at the information on a daily basis.

PEARCE: That does give me a scope of what I'm looking at. Now, on page 12, you're talking about the amount of money that you return, do you all have estimates of how much is lost every year?

EL-HINDI: I think that you're referring to the portion and the written testimony where I talk about business e-mail compromise. That's just by way of background, that's a situation in which we've been working with the FBI to have reported to us situations in which one has compromised an e-mail account and directed a financial institution to send funds, maybe a payment or something else. Instead of the usual place that it should go to, a new place to go.

The estimates of that type of fraud, business e-mail compromise are in the hundreds of millions. I don't have specific numbers on it.

PEARCE: Hundreds of millions a year or...

EL-HINDI: Yes.

PEARCE: Yes.

EL-HINDI: Yeah.

PEARCE: OK.

EL-HINDI: Well, I would say, you know, this is a phenomenon that has started over the past few years, so I think that that's cumulative. We have been able through our contacts with other financial intelligence units when we can alert them quickly to the fact that funds have been -- have fraudulently gone overseas. We have been able to work with them to have a transaction stop them and have money returned to the United States.

Over the past year and a half, two years, we have been able to assist in the recovery of approximately \$250 million.

PEARCE: OK, the -- you talked in your testimony about IT modernization, how long have that been working on that and did modernization actually work? I've Asked that because as a pilot I watched the FIA and their continual attempts to change the way they process data and it never worked. And it's always extremely expensive and it's always behind time. Give me a little bit of an update on that.

EL-HINDI: Well, with respect to our modernization program, I think we do consider it complete. We're now in the operation and maintenance phase of continuing it. But it was a program that was a multi-year effort, but we delivered it on time and under budget.

And in terms of, you know, external review of it, it was one of those few situations where we got no recommendations from, you know, our auditors in terms of how we might have been able to...

PEARCE: So, you feel satisfied with what you got?

EL-HINDI: Yes, we -- you know, I will say there is always room...

PEARCE: I don't need the qualifiers here. The last question is, if you were to review the process that does not appear to have undergone much change since you stood up as an organization. Does that process need review?

EL-HINDI: In terms of the premise of the question, that the process hasn't changed much since we stood up, I might disagree with that.

PEARCE: OK, that would be fine.

EL-HINDI: I think that the rules -- the rules and the requirements have pretty much stayed the same. But we -- you know, we collect information from the financial sector. The ways in which we have analyzed that information and began to disseminate it and more actively targets some of our information collection with industry have changed over the course of time.

PEARCE: OK, my time has expired. We'll now recognize the Ranking Member, the gentleman from Colorado for five minutes.

PERLMUTTER: Thanks Mr. Chair, and we have a lot of members here today, so I'm just going to focus on one subject and then yield back. So first, I'd like to introduce into the record FinCEN 2014 G001, dated February 14, 2014. BSA expectations regarding marijuana-related businesses.

PEARCE: Without objection.

PERLMUTTER: Thank you. So, my focus is going to be obviously on marijuana. We're now at 29 states, have some level of medical marijuana or fully legalized marijuana usage, plus eight or nine states with cannabis oil for seizures and other malady.

So today, I introduce the secure and fair enforcement banking act which was formally the marijuana business access to banking act. To try and get us here in the Congress, say if a state has a regulatory structure in place than all of the different Bank Secrecy Act and SARs and things like that, are sort of set to the side. And if individuals are operating as legitimate businesses in their state, and they will be given authority to continue to do business.

But my questions are to you, Mr. El-Hindi, and thank you for your service to the country. What is the status of the guidance that I just listed, otherwise known as the Cole Memo. Are you guys going to follow it? That's my question.

EL-HINDI: Well, the Cole Memo actually came from the Department of Justice...

PERLMUTTER: Right.

EL-HINDI: And I will say that...

PERLMUTTER: In concert with FinCEN.

EL-HINDI: Yes. And our guidance followed on that. The Cole Memo specified some priority areas for law enforcement focus in the marijuana space. Our guidance was designed within the financial sector space to provide law enforcement with information that would be useful with respect to following those priorities.

The -- you know, we feel that the guidance has worked. There's information in the database, but under the guidance helps financial institutions distinguish between situations in which they're providing service to marijuana business where it seems to be consistent with the state law and does not touch upon any of the priorities in the Cole Memo.

That's one type of filing that they can do. They can do a type of filing where they indicate that -- that there are other -- the activity -- there's more suspicion...

PERLMUTTER: There are other irregularities of some kind?

EL-HINDI: Yes. And then they file reports when they've terminated a relationship as well. The construct there actually came from what we saw the banks filing even prior to the guidance coming out. In a situation where you've got a conflict of federal law and state law, we wanted to see how the banks were actually dealing with it.

And when we looked at the data that they already have been providing, they were making those distinctions in terms of situations where they would say, the only reason we are filing this suspicious activity report is essentially because marijuana trade remains illegal under federal law.

So we saw that the distinctions that they were making, we felt that going forward with guidance in the way that we did would provide law enforcement and states where they're legalized and non-legalized, that it would provide them with information that they could use. In our context, for us, it's all about the information, and making sure that law enforcement has the information that it needs.

We will continue to work with law enforcement and the Department of Justice on that front. And to the extent that they, you know, provide any further indication of what their needs are, we will be working with them.

PERLMUTTER: So far, you're operating under that guidance that I read into the record?

EL-HINDI: That guidance still stands.

PERLMUTTER: Yes, thanks. I yield back.

PEARCE: The gentleman yields back. The chair now recognizes the gentleman from North Carolina, Mr. Pittenger.

PITTINGER: Thank you, Mr. Chairman. And thank you again Mr. El- Hindi. Mr. Hindi, just for clarity, the interest of FinCEN is to receive the data from the financial institutions through SARs reports and analyzes the data and then send that ad for certain investigations. Is that correct?

EL-HINDI: That is -- that is one of the many things that we do in terms of our support to law enforcement.

PITTINGER: In that framework?

EL-HINDI: Yes.

PITTINGER: What I would like to assess here is the impact that could be achieved by the banks also having access to data from the government and how that might limit our -- restrict the number of potential SARs reports that need to truly be evaluated or to be processed out for investigation. Is that a good assumption?

EL-HINDI: I think that you're touching upon some of the work that we've been trying to do with industry and law enforcement to target information collection efforts.

PITTINGER: Given the impediments that we have in terms of restrictions and data sharing of -- would it be reasonable to assume that we can achieve better results with less proactive engagement through a broad range of data with the financial institutions. With -- if we had a safe harbor for bikes, where they can share with each other, and if they had access to government data, will that enhance our ability and make it more fluid approach that would enable us to not have to address as many data points as it's required at this point.

EL-HINDI: I think the enhanced sharing of information across the financial institutions based on what we have seen and how we've worked with them really would be helpful. Each of them only has some much of a view of a particular transaction.

And some of the special projects that we've engaged with them, we've been quite happy to bring them together, have them share information with each other and share information with ourselves. And we do view that as bringing added efficiencies to our regime. The benefits with respect to that type of information sharing are clear.

PITTENGER: We probed this morning with Andre Sharen (ph) and your associates, and with the number of banks who were there, who were wanting to achieve the best results but believe that we would have a less interest, less cause for privacy issues if that data sharing capacity was there. And we would infringe on privacy issues as much if we will be able to enhance the data sharing capabilities. Would you concur with that?

EL-HINDI: I think that the opportunities for greater data sharing among the banks and among the banks with government are great. And I think that, you know, we -- as was mentioned earlier, we have to be sensitive to the privacy issues...

PITTENGER: Sure.

EL-HINDI: ... that come up both with respect to general reporting under our rules as well as with respect to information sharing among the banks.

PITTENGER: One other question quickly. Have you work with other FIUs in the Egmont Group? What is your assessment in terms of their technological capabilities. I mean, you have extraordinary software capabilities that you have available there at FinCEN. What -- do you believe that we need to do greater work with our allies and friends in terms of enhancing their technological capabilities to have better engagement with us and collaboration with us?

EL-HINDI: One of the things that we have been talking about within the FIU community generally is making sure that FIUs are well positioned to do the work they're supposed to be doing. Different FIUs and different jurisdictions are at different points, but as a group, we work on trying to elevate each other as much as possible. And there are ways in which some of them could benefit from greater capacities technologically as well as your greater support within their own legal system.

PITTENGER: But to the extent that they're weak, it weakens the entire system, wouldn't that be correct?

EL-HINDI: Yes, you know, the -- we always say that within the global system, the weakest link can hurt the chain.

PITTENGER: Yes, sir. Thank you.

PEARCE: The gentleman's time has expired. The chair now recognizes the gentlelady from New York, Miss Maloney.

MALONEY: Thank you Mr. Chairman and thank you to Ranking Member, and thank you to our witness for being here today.

And you mentioned in your testimony that FinCEN issued two geographical targeting orders or GTOs covering two sites; Manhattan and Miami. That would require title insurers to collect beneficial ownership of information for any illegal entity, making an all cash real estate transaction over a six month period. And I'm very pleased that FinCEN extended these GTOs in February, so I want to thank you and your organization for doing that.

But the findings from the first six months were absolutely startling. As you noted, about 30 percent of the transactions reported in those six months involved a beneficial owner or purchaser, a representative that had previously been the subject of a suspicious activity report.

And I would say, it's unusual to be buying real estate with all cash. It's usually in the banks and everything. So the fact that it's an all cash transaction, and that there are also a suspicious activity report, and 30 percent is really I think problematic.

I would characterize it as a shockingly high number, especially since you announced to the world that you'll be collecting this information on beneficial ownership in these two cities for that exact period of time. So I would think that money launders are bad actors, we just know not to go to those two cities during this time frame, since it was so widely reported.

So in light of the findings from these two GTOs, would you say that collecting beneficial ownership information is important for catching money launders and stopping terrorism financing and other illegal activity like gun-running or other illegal activities?

EL-HINDI: Yes, beneficial ownership information and the collection of it in greater transparency in that space are definitely something that will help law enforcement in their efforts.

MALONEY: And what do you think about the 30 percent was using cash to...

EL-HINDI: Well, let me -- let me also clarify that in the context of the geographical targeting order, when we talk about a cash transaction in real estate, we're essentially saying and we clarified this in the roll-out of the GTO that we were focused on non-loan related transactions. The cash component of it comes into play with respect to the confines of our 8,300 requirement in our geographic targeting order generally.

The way the requirement works, if it's a non-loan-related transaction and some portion of that transaction involved cash or monetary instruments and was done by a legal entity and within the thresholds for the -- you know, that we set with respect to the value of the property, then it was reportable.

The geographic targeting order was very specific, it had -- you know, there are certain things that would not be captured within that reporting. For example an all wire transfer of funds even though it was -- there was no loan involved with the bank, would not have been covered by that geographic targeting order.

MALONEY: There have been a number of reports in New York that real estate over 2 million is almost always an LLC beneficial ownership is hidden. Have you done any reports looking at LLCs which is a prime form of hiding the ownership? There are number of them in the country now. Could you look at it if you haven't?

EL-HINDI: I would have to get back to you in terms of precisely what our analysts might have researched. We're all familiar with some of the things that we see in the press reports. And real estate has been an area that we know that we need to focus on, it's been an evolutionary process for us.

I just go back and say that our -- with respect to how we have covered residential real estate in the past, since roughly 75 percent of the market involves a bank or a bank loan, we feel that the involvement of the banks in those contacts provide us with an amount of coverage. But we do have to focus on areas where banks aren't involved.

MALONEY: Well, actually, we just came from a meeting which Mr. Pittenger organized, and the banks were saying, they don't know the ownership either in an LLC. They have no idea. So, I just like to ask very quickly, do you think it would be easier if companies had to disclose their beneficial owners at a time that the company is formed?

EL-HINDI: Yes, that kind of transparency would certainly be a benefit to law enforcement.

MALONEY: Well, as many people know on this committee, I have a bill in that would do just do that. So I want to thank you for your thoughts and input on it and...

EL-HINDI: It would be helpful and to the extent that Congress is going to focus on this issue, we'd be happy to work with them.

MALONEY: Thank you very much. My time has expired...

PEARCE: The gentlelady time has expired, the chair now recognizes the gentleman from Pennsylvania, Mr. Rothfus.

ROTHFUS: Thank you, Mr. Chairman, thank you Mr. El-Hindi for being here today. Talk a little bit more about these real estate transactions. Does the government have any idea of how many real estate transactions involve money originating from foreign accounts?

EL-HINDI: I would have to get back to you on that in terms of any work that we have done, particularly in that context. I will say that the real estate market is complicated. It is something that varies -- you know, the information requirements and processing requirements vary by state and vary by county. So it's something that where we feel that we still are in the process of collecting information to find out precisely what information is out there and how we should approach it.

ROTHFUS: Yes, I may want to follow up with you on that. Do you see a -- foresee a need to expand the use of geographic targeting orders to more localities in the U.S.?

EL-HINDI: The geographic targeting order authority that we've had, we have been using more of late. Just this part of FinCEN being more active in this space. Law enforcement has asked us -- and we've worked with them on geographic targeting orders in the -- in Los Angeles with respect to the garment, you know, manufacturing. We've done work in Miami with respect to trade and electronics equipment. Both of those on the trade-base money laundering context.

It is a useful tool and it is something that we continue to explore with the best use of with law enforcement with respect to -- if you're -- if you're asking with respect to real estate in general. I'm not in the position right now to talk about any future regulatory efforts. I can just tell you in general that we find the tool useful and, you know, continue to discuss it...

ROTHFUS: What about the 180-day duration of a GTO, is that long enough?

EL-HINDI: To the extent that a GTO needs to be extended, we can extend it for another 180 days under the statute.

ROTHFUS: Do you know whether there'll be certain domestic real estate markets that are exposed to cartel-owned real estate, real estate that the cartels from Latin America might be going to certain geographic regions?

EL-HINDI: I can tell you that in terms of some of the criteria that we looked at, and discuss with law enforcement when we identified regions of focus. We were looking at the market, we were looking at -- you know, to the extent that there was an active use of shell companies within that real estate market. We were looking at value, we were looking at the amount of foreign interest in those jurisdictions. So that's how we made selections in terms of the scope of the geographic targeting order.

ROTHFUS: The difference between our larger institutions and smaller ones. Are smaller banks in credit unions more vulnerable to money laundering versus the bigger banks?

EL-HINDI: Well, small banks and bigger banks, they're both banks, they both process transactions. They have different ways of knowing who their customers are.

I would say that both can be vulnerable and that's why both are subject to our rules. We say that banks need to comply on our risk-based approach. They need to assess their risks and act accordingly.

I would just say that with respect to smaller institutions for example in the terrorism context, some might assume that, you know, they might not have the same type of information the large banks might have or be able to, you know, look at thousands and thousands of records.

But we have seen that in the terrorism context, small banks are contributing -- I think it's 10 percent or 12 percent of some of the most useful reporting in that regard. There are differences among those institutions and there are differences in the way they approach things. But they both, you know, large institutions and small institutions have a very important role in what we do.

ROTHFUS: I thank the Chairman, I yield back.

PEARCE: The gentleman yields back. The chair would note that we have votes called, it's my intention, if Mr. Foster who is next in the queue desires to go ahead and ask questions now, we'll do that. We will come back and complete the hearing afterward.

But you can go now or wait till after the votes Mr. Foster, I'll give it your choice, do you...

FOSTER: I'm happy to proceed.

PEARCE: OK. The gentleman is recognized for five minutes.

FOSTER: Well, thank you for everything you do here. I'd like to return to the real estate issue a little bit. You mentioned the value of just eliminating anonymous shell corporations which is something -- do you know what fraction of countries on earth roughly allow anonymous shell corporations and what don't?

EL-HINDI: I do not have that...

FOSTER: With the majority -- would you feel comfortable in saying the majority do not allow anonymous shell corporations?

EL-HINDI: Again, I would have to...

FOSTER: OK, I'd be interested in knowing that, because it's my impression that we're sort of an oddity in allowing this. And it makes -- one of the reasons the U.S. is not only the center for financial activity generally, but also unfortunately for a lot of money laundering.

The other thing in -- some countries, in my impression, have what's often called the Cadastre, this is a legally binding registry of who owns which parcel of land. You know, so you can sometimes not only just, you know, go to the federal map and mouse over a certain plot of land and it gives you the whole ownership history and all the transactions.

This is information that is publicly accessible in the U.S., but often only by, you know, going into the basement of some dusty courthouse to get that information. And that if there was a national legally-binding registry of who owns which parcel of land -- and I think some states are doing this. For example, Minnesota, areas of Canada, I believe do this. Would that really simplify the whole procedure of figuring out what each transaction was about?

EL-HINDI: I would just say that in general, greater transparency with respect to beneficial ownership in this space would be useful. Precisely how we get there is something that, again, would be happy to work with, the Congress on to the extent that they're focused on this issue.

FOSTER: Now, you go through title insurance companies to attempt the geographical targeting. In what ways is that satisfactory or unsatisfactory, complete or incomplete?

EL-HINDI: When we look at the geographic targeting orders, we are trying to -- and as we would do in any regulatory context where we're trying to collect information. We are looking for nodes and places where we can efficiently collect information. And that context, giving their role in the transactions and the information that they could obtain as part of that, we felt that it made sense.

FOSTER: All right, and this title insurance mandatory for these cash transactions and so on?

EL-HINDI: You know, I mentioned before that the -- you know, what happens in each particular part of the country in terms of the jurisdiction. You know, there are different rules in different places. Whether it's mandatory, whether it's something that is essential -- has become essential by virtue of practice. I'd have to get back to you on -- I just will say that part of the complications in the real estate sector is the variety of rules that exist.

FOSTER: Thank you. And I think this is something where Congress should really have a look at this, because the anonymous ownership of land is -- not only having to do with terrorists financing, but there's a lot of just ordinary corruption associated with secret ownership of land in this country. And it would be, I think in the interest of good government general -- governance generally to have some improvements here. So, thank you, I yield back.

PEARCE: The gentleman yields back. It's the intent of the chair to reconvene the hearing immediately after votes. For now, the subcommittee stands in recess.

(RECESS)

PEARCE: So we left off with Mr. Foster on the minority side, and we'll proceed to Mr. Williams from Texas. You're recognized for five minutes.

WILLIAMS: Thank you, Mr. Chairman, and thank you Mr. Director for you being here today. I want to first start by exploring the topic of trade-based money laundering this afternoon, then discuss it in more depth. The use of geographic targeting orders, GTOs as we know them by, FinCEN and the use of trade transparency units.

As you know, trade-base money laundering is a process with someone whether that be a criminal or a terrorist organization, attempts to disguise the proceeds of crime. In this case using trade to legitimize illicit behavior. And although it's difficult to put a price tag on how much money he's laundered, and if you trade, I think it's safe to say it's in billions of dollars.

In fact, 2010 advisory report on TBML issued about FinCEN stated that from 2004 to 2009, more than 17,000 suspicious activity reports described TBML involving transactions, total \$276 billion. And although the practice of TBML is common, combating it remains very difficult especially when companies change names, locations and schemes so frequently.

So, let me start by asking you this, is that normal? Is it routine for the names to change and businesses to go on operating?

EL-HINDI: I would say that, that is definitely a methodology that we have seen in some of our work, and certainly with our work with law enforcement.

WILLIAMS: OK. Is the U.S. government not providing adequate resources to help you combat these schemes.

EL-HINDI: Congressman, I think that as you've seen from the things that we have put out, we know that trade-base money laundering is an issue and we continue to work on it, and we worked with financial institutions on it. We worked with the trade transparency units as well. They have access to the data that comes to us through the financial institutions and we worked with them to make sure that they're in a position to use it. We have ongoing discussions with them on that. It is -- it's definitely an issue and it's something that we are focused on.

WILLIAMS: Do you think it's all about resources or does Congress need to give more authority in this space?

EL-HINDI: I'm really not in a position right now to talk about our authorities. I can just tell you that within the authorities that we do have the information that we're currently collecting, we are working with other parts of the government.

WILLIAMS: OK. In your testimony, you spoke about GTO authority which Congress gave Treasury the authority to use in 1980s. And although, back then, criminal organizations were mostly cash and other monetary instruments, wire transfers are not covered in the GTO authority. And as we've talked about in past hearings, and something is personal to me as an auto dealer, the trade-base money laundering scheme using used cars relies heavily on money transfers from completing the sale.

Do you believe Congress needs to go back and update this authority?

EL-HINDI: To the extent that Congress is interested in looking at that authority and looking at some of the issues that have raised with respect to the limits on what we're able to collect currently, we'd be happy to work with Congress on that.

WILLIAMS: Good. In your opinion, what industry the GTOs are intended to target, can circumvent these orders by using wire transfers?

EL-HINDI: I'm sorry, could you repeat that?

WILLIAMS: What industry the GTOs are intended to target, can circumnavigate these orders by using wire transfers?

EL-HINDI: To the extent that -- excuse me, to the extent that the authority right now is limited to our ability to use geographic targeting orders when there's cash involved. Any type of transaction that goes through wire transfers wouldn't be within the scope of what we could do. So, I will say that, that's going to apply to a variety of different businesses.

WILLIAMS: OK. Finally, something that this committee has talked extensively about expanding is the use of trade transparent used to help combat trade-base money laundering. Most of the active TTU reside in countries located in South America. In addition, the importance of knowing trends in conduction ongoing analysis of trade data provided through partnerships with other countries, trade transparency unit is vital, I think we'd agree.

So, director, although FinCEN doesn't run these units, can you talk to the committee about the importance of sharing data with other countries and maybe how expanding these units will help better you do your job?

EL-HINDI: I'll let other parts of government that are focused on the TTUs address the TTU aspect of it. I can just tell you again that domestically, we work with the TTUs and we're focused on making sure that they have the data that we have and they're able to use it. And then generally speaking, in terms of the way we as a financial intelligence unit work with our counterparts overseas. We have definitely been pushing for more and more appropriate sharing on our secure and efficient basis of the information that each of us have.

So, you know, I think in the FIU context with respect to financial intelligence, we definitely see the value of working with our counterparts overseas.

WILLIAMS: Thank you for your testimony and I yield back.

PEARCE: The gentleman's time has expired and the chair now recognizes the gentleman from Minnesota, Mr. Emmer.

EMMER: I thank you very much and I want to thank you for being here today, and the chairman and Ranking Member for setting this up. As I understand it, you've been the acting director -- actually, not the acting director, you've been the acting director since the new administration came in, of FinCEN.

EL-HINDI: I have been acting director since...

EMMER: 2015?

EL-HINDI: Yes, May -- no, I'm sorry, May -- I've been the deputy director since 2015; in May 2016, I became the acting director.

EMMER: Thank you, thank you. If FinCEN has -- how many total employees?

EL-HINDI: On board right now, we have about 280, and you know, our target is 340.

EMMER: And your total budget, annual budget is in the neighborhood what?

EL-HINDI: Historically, it's been in the 110, 115 million range. I'm not prepared to get into budget-specifics right now.

EMMER: No, I was just asking for ball park, it's nothing -- these aren't gotcha or whatever, I'm just asking...

EL-HINDI: Thank you.

EMMER: ... for mostly my own knowledge. And you've got -- you're divided up into six divisions as I understand?

EL-HINDI: Yes.

EMMER: And since you have been at FinCEN, has the organization being remodeled in any way or change? Has this always been the way it's been since it was created?

EL-HINDI: I'm actually in 2013, we went through a restructuring of the organization under the previous director. I was on board at that point and I headed one of the divisions at the time. And that restructuring -- we undertook that because, you know, FinCEN, as I've mentioned before, you know, bridges the financial community, the law enforcement community, the regulatory community and our international counterparts.

EMMER: Right.

EL-HINDI: And under our previous structure, we found that the divisions that were focused on regulatory seem to view only the financial sectors of their customers. The division was focused on analysis and liaison, only viewed law enforcement as their customers. A division focused on international issues, only focused on other FIUs. The reality is, for an organization like ours, that every one of our stakeholders is a customer of the whole organization.

And the -- in the new structure, we try to break that down a bit, and we really stress the fact that every external stakeholder is a customer of every part of FinCEN and every part of FinCEN is a customer of every other part. So, the...

(CROSSTALK)

EMMER: So, if I can interrupt you, because I'm going to run out of time. I'm not interested, and forgive me if I sound a little sharp. I'm not interested in customers of FinCEN, I'm more interested in, you're collecting all this information, 154,000 reporting entities which I would suggest you would call one of your customers -- if you're looking at this whole thing.

I'm really concerned about private information, and how you ensure that law abiding people are not drawn into this net. Fifty- five thousand reports everyday based on suspicious activity. I was trying to look at the law, how are suspicious activity defined and who makes the determination as to whether it's suspicious or not?

EL-HINDI: With respect to the reporting that we get, keep in mind, that some of it is the currency transaction reporting which is objective reporting. The value of the transaction is if it's more than \$10,000 of cash...

EMMER: Right.

EL-HINDI: ... coming in and out, that's objective reporting. You know, that's roughly \$15 million reports a year. Suspicious activity is more subjective and our regulations...

EMMER: Who determines it?

EL-HINDI: Our regulations instruct a bank.

EMMER: Yes, so you send out the guideline, right?

EL-HINDI: To the bank, yes...

EMMER: And what's your guidelines?

EL-HINDI: Bank and other financial institutions. Where they have reason to believe that the source of funds might be illicit, where the transaction might not seem to have an apparent business purpose.

EMMER: What happens if they don't? So what if they're just putting money into a savings account?

EL-HINDI: To the extent that an individual is putting money into a savings account, a bank might not find that suspicious.

EMMER: Well, and that's what I'm -- but it seems to be so vague. What is suspicious activity and if you're putting the owners on the reporting institution, what's the consequence if they don't?

EL-HINDI: I understand. So, let me just work through a story. You know, I am -- you know, I'm a customer of the bank, maybe I'm a student. I'm a student customer of the bank. I am -- you know, the bank understands that I'm a student and I've opened up an account.

To the extent that as a student, I begin to engage an incredibly large and repeated transactions, that's going to be something that the bank in terms of knowing its customer and what it might expect, you know, from a student would say, that looks suspicious. That's different from a transaction that you would normally expect from a student, that's just -- that's just one category.

The guidance that we provide to banks, you know, walks through -- you know, helps them identify red flags and in certain situations in which they could be identifying that type of activity.

EMMER: I see, my time has expired, if I could get a copy of your guidance after the hearing...

EL-HINDI: Sure.

EMMER: ... I'd appreciate it. Thank you Mr. Chairman.

PEARCE: The gentleman's time has expired, the chair now recognizes the gentleman from Maine, Mr. Poliquin for five minutes.

POLIQVIN: Thank you Mr. Chairman very much and I thank you very much for being here sir. You folks in my -- in my terminology, anyway, are the financial cops for the U.S. government, intelligence and the cops, is that right roughly?

EL-HINDI: Yes, we assist -- we assist the cops...

POLIQVIN: Good.

EL-HINDI: ... and we assist the financial institutions.

POLIQVIN: Great. So, we know how important your work is Mr. EL- Hindi, we are quite proud of our state of Maine, and we consider ourselves one of the safest states, and statistically are one of the safest states in the country. However, all of us I think here in Congress have been alarmed by knowing that there are terrorist investigations going on in every -- each of the 50 states I should say. And one of this really frightened us last summer actually, an individual who had settled in Maine as a refugee ended up dying in the battlefield for ISIS in the Middle East.

And a big concern of us, so we all want to make sure we help you make sure this process is efficient as possible. Now Mr. Ramer (ph) and other folks have mentioned, the huge volume of SARs every day, about 55,000. Now, based on 70 or 80 folks who have working on this, at your shop, if I understand this, that's about 800 per day.

So, I mean, that's a lot -- and I'm not quite sure, I'm guessing it probably doesn't make a lot of sense to spend a lot of man hours on 800 fillings per day. I'm guessing some of those aren't of great quality. And is there anything -- and if I'm wrong, I know you'll correct me.

Is there anything that we can do to help you, any legislation we can pass, any rule making that you folks can go through with our support that allows you to use different technology to get to a better place, so this is more efficient, to make sure -- excuse me, make sure we drill down on what -- what -- what -- filings are actionable?

EL-HINDI: I'll just try to provide a little context with respect to all that information that comes in. It is varying types of information. As I mentioned before, some of it is objective reporting, some of it is suspicious activity reports. And when you think about the percentage of things that come in on a daily basis, the percentage of SARs is actually going to be lower in comparison with currency transaction reports. That's just the math.

But people need to -- you know, we try to make sure that industry and the public understands that the way this information is used is in a variety of context. It's not easy to associate any one particular filing with anyone particular action, in fact in terms of our metrics and how we measure success. You know, we try to emphasize the fact that it's not as if every single piece of information is going to lead to some individual arrest.

POLIQVIN: OK, let me drill down a little bit if I can Mr. El- Hindi, I only got a couple of minutes left here. Is under the Bank Secrecy Act -- is there liability for a financial institution to not permit -- that's not the right word. But is there a liability, financial liability and other wise responsibility for financial institutions if some of the money laundering issues and other illicit activities flow through their institution. Is there a liability?

EL-HINDI: Under the Bank Secrecy Act, they're required to have programs in place that enable them...

POLIQVIN: And if they don't, is there a liability?

EL-HINDI: If they don't...

POLIQVIN: OK.

EL-HINDI: ... there is -- there are liabilities.

POLIQVIN: OK.

EL-HINDI: They have an enforcement department and they on occasion will take action.

POLIQVIN: OK, well, you know our health care industry for example in our great country. There are instances where doctors -- I don't want to be accusatory here, but there are narratives where some folks in the health care profession will overuse procedures or testing I should say instead of procedures. Because of fear of liability down the road -- defensive medicine.

Do you find that that might be analogous to the situation we have here, where financial institutions will file these suspicious activity reports in abundance to make sure they're protecting themselves against future liability? And therefore it gums up your work and we're missing opportunities to really drill down on actionable items?

EL-HINDI: This issue actually came up prior to the financial crisis, and we actually looked at the SARs to try to discern, you know, whether or not we found that data was coming into the database on a defensive basis where it had no value. And we could not see that.

POLIQUIN: You could not.

EL-HINDI: The financial institutions themselves, we feel are making good decisions about what to file and what not to file. We don't ask for perfection, we ask for them to have systems in place so that they can meet their requirements and genuinely provide the information that's necessary. And again as we looked at it -- as we have looked at it, you know, we have not been able to discern this so-called defensive filing.

POLIQUIN: Mr. El-Hindi...

EL-HINDI: And we're sensitive to -- we're sensitive to a lot of the concerns that industry has in terms of the cost and the resources they're going through, and we continue to discuss with them better ways of making the system more efficient.

POLIQUIN: Please, keep...

PEARCE: The gentleman's time has expired.

POLIQUIN: Thank you Mr. Chairman.

PEARCE: The chair would now recognize the gentleman from Arkansas, Mr. Hill, for five minutes.

HILL: I thank the Chairman, I appreciate you being here Mr. director, thanks for sharing your thoughts about FinCEN, want to follow up on some of Mr. Emmer's questions. I've looked at a lot of material and found a number of different authorize and FTE position, so I'm just going to try to clarify that.

It looks like there are 373 FTE's for FinCEN with about 280 current positions, is that...

EL-HINDI: I think it's closer to 340.

HILL: OK. That's what I'm saying, I've got some confused information. And it's my understanding that there're a number of unfilled staff positions at FinCEN based on those numbers. How many exactly are unfilled and what's the average unfilled slots for the past year or two and is it fair to just look at FTEs versus...

EL-HINDI: Yes, I'll focus on the FTEs...

HILL: Yes.

EL-HINDI: And currently we have roughly 70 vacancies that we're looking to fill...

HILL: Yes.

EL-HINDI: Of that, you know, roughly, half are in what I'll call an active recruitment process or selection process where we're waiting for people to get through security clearances. We've had some issues with respect to our hiring and we are working on that. One of the things that.

HILL: What's an example of -- I mean, you got security clearances that gets backlog...

EL-HINDI: Security clearances...

HILL: Do you have a -- or you have a competitive pay issue at all?

EL-HINDI: Given the interest in what we do, there are instances where we lose people to the private sector, where they can get...

HILL: What's the average tenure of an Intel investigator for you?

EL-HINDI: I would have to get back to you on that, I don't have that.

HILL: But you do a good job of training I would...

EL-HINDI: We do a -- we do a good job of training and we -- you know, because we have a great mission, I think that we're in a position to recruit the talents that we need.

I'll just say that, you know, you lose a person in about two weeks the amount of time that it takes, you know, from the posting of an announcement to the selection and primarily the security clearance average is sometimes over a year. So that's something that we continue to work to address.

HILL: But, I mean, really for us and the work we do on this terrorism subcommittee, I mean, that's a national -- that's a national security problem, isn't it, that you -- that you have a year lag time in that process. What -- as I understand it, some aspects of national security Intel analysts have a fast track hiring authority, is that correct?

EL-HINDI: That is correct?

HILL: And are your slots not covered by that authority?

EL-HINDI: We're not covered in that.

HILL: Does it take legislative actions to have you covered under that authority?

EL-HINDI: I would have to get back to you in terms of precisely how something like that might work.

HILL: It seems like if somebody like the Secretary of Treasury could make that happen, so how many -- roughly is that the 70 Intel analyst slots that would be covered by that...

(CROSSTALK)

EL-HINDI: No, actually -- you know, the Intel division is I believe almost fully staffed at this point.

HILL: OK. If slots go unfilled and you've got them authorized, which means you have the appropriate money to pay them, but they go unfilled for a year, you don't risk losing that federal fund and get authorized and..

EL-HINDI: No, we -- we, you know -- you know, have done a number of things, we work, you know, to bring on presidential management fellows, we work with the workplace recruitment program to try to bring people on faster. We do have the ability to use some of that money to bring in contractors on a basis to make sure that we're able to get the work done.

HILL: If you don't mind, just following up, maybe with a memo on this subject that talks about authorized positions and steps you've taken to compress the hiring time and any additional authority you think the secretary needs to have the critical national security analytic jobs be covered under that fast track authority, that would be I think very helpful to the...

EL-HINDI: We can provide you with the information, I think.

HILL: And in the intelligence community inside government, do people pay retention bonuses or things of that nature within the government scale to retain key employees that are sought after by the private sector?

EL-HINDI: Well, keep in mind that we are not part of the intelligence community...

HILL: Yes, I'm throwing you in with such a great group of people...

EL-HINDI: OK.

HILL: You just say thank you. But in the law, in federal law...

EL-HINDI: I would...

HILL: I'll rephrase and say within federal law enforcement.

EL-HINDI: Yes, we -- I would just say within FinCEN...

HILL: Yes.

EL-HINDI: ... we do have the ability to use retention bonuses.

HILL: OK, thank you for your time. Thank you Mr. Chairman.

PEARCE: The gentleman's time has expired, the chair now recognizes the gentlelady from Utah, Miss Love for five minutes for questions.

LOVE: Thank you, thank you Mr. Chairman, thank you for being here today. One of the concerns we hear is that financial institutions are spending so much time and money to gather information. But there's a great desire at the same time to make sure that the effort that is being spent to gather -- is spent to gather actionable information rather than just more information. So there's a concern and I apologize if this was covered already, we've been in and out, I just need them for my information.

There's a concern that FinCEN gets too much information and thus, unable to sort through it for all important indicators of crimes, can you please address that?

EL-HINDI: Well, it's true that we get a lot of information and we get more information now than we did 10, 20 years ago, actually this is FinCEN's anniversary week, we're now 27 years old. But the capacity to digest that information and use it and disseminate it quickly has also increased over the course of time.

We're in an electronic era now where the information can come in faster and can be analyzed more quickly, and we work on that. I think that one of the things that we also try to do is make sure that the financial sector knows just the many ways in which we use the information and how valuable it is.

LOVE: So do you need to gather that much information? I mean, are you focused on specific actionable information that you gather; or because of the technology, you decide to get as much as you possibly can and try and analyze?

EL-HINDI: Well, keep in mind that we are -- you know, FinCEN is between, and it is a bridge between law enforcement users and the financial sector. I think one of the things that we like to point out is that law enforcement would probably want more information and basically everything that they can. As a regulator in this space, we are responsible for making sure that we're balancing burden and benefits and trying to hit through...

LOVE: So who looks at the 55,000 reports that come in every day?

EL-HINDI: The 55,000 filings come in each day, they go into the database. Within the database they are subject to queries by 10,000 stakeholders, and, you know, essentially there are...

LOVE: So 10,000 stakeholders are the ones that look into the 55,000...

EL-HINDI: They have the -- they have the ability to use that information and access that information. But they are not -- would 10,000 people be looking at every single filing that came in? That's not how it works.

LOVE: OK.

EL-HINDI: The -- what people -- what we try to stress is that there is, you know, for each filing, it has its individual value but then collectively they have aggregate value as well. And different pieces of information filed by different financial institutions with respect to different transactions can be connected in that system.

LOVE: OK.

EL-HINDI: That's how you do -- that's how we...

LOVE: Let me...

EL-HINDI: ... develop and understand better networks of illicit activity by putting all of these information together.

LOVE: OK, let me delve into a little bit more specifically into your operations. Does FinCEN report on the commonalities found between SARs, namely these -- namely these common items, addresses, ID numbers, phone numbers, e-mail addresses, IP addresses?

EL-HINDI: Commonality, I think that what -- when the information is in the database, one of the things that our modernization has enabled us to do is use business rules and algorithms to help identify situations in which there may be common elements. Such as you said, for example...

LOVE: Right.

EL-HINDI: ... a phone number and address that may be appearing in multiple reports coming in with respect to different transactions and particularly across different institutions. So, that is a way in which those data points can be connected and we can identify network...

LOVE: So...

EL-HINDI: ... activities.

LOVE: So, according to you, FinCEN proactively analyzes the above to common -- to find common attributes and share with law enforcements so that investigations can be initiated.

So, how do -- how do the rules -- how -- I'm losing time, shoot, you know what, if there's extra time, I would like some extra time if that's OK...

PEARCE: The gentlelady's time is extended.

LOVE: Thank you -- oh, thank you. How do the rules -- search within the database work daily? So how does it work? What are the rules that you use when you're searching within the database daily?

EL-HINDI: So, I'll give you an example in the terrorism context. You know, we will -- we will identify a situation and we'll work with our, you know, with our team to figure out what types of terms or what types of situations might be most associated with a terrorist type activity. We will put that into the system, use that as a business rule and then that will help us flag items of particular interest for further follow up. That's just one example of the development of a business rule.

LOVE: So, they basically glorify Google searches, I mean, how long does...

EL-HINDI: You know, they -- you know, some -- some type of searching of the database might be based on a simple, you know, watch- list or name type thing. Others are going to be much more complicated weighted multi-factor analysis. I have to apologize, I am not one of the experts with respect to the development of this, you know, these types of rules. But we can certainly get back to you in terms of...

LOVE: Yes, I would like to have some details as to how, you know, these -- what the rules are -- I mean, you're talking about quite a bit of information daily. I'd just like to dive into that a little bit more and understand how it works. Thank you, Mr. Chairman.

PEARCE (?): The gentlelady's time has expired. The chair now recognizes the gentleman from Ohio, Mr. Davidson, for five minutes.

DAVIDSON: Thank you Mr. Chairman.

And thank you for being here, and thanks for the information and the time it takes to answer all these questions.

I'm new to the committee and new to the topic as a member of Congress anyway, but certainly right at the intersection of a lot of things where you say just follow the money and you'll get the folks that makes that possible. So, it's nice to talk with you and I think it's an incredible -- incredibly important mission.

I'm particularly concerned about how do we do that and not forget about our bill of Rights. How do we not forget about who we are as Americans. And one of the things that's very relevant is something in your testimony regarding section 314(b).

I'm just going to read what you stated here briefly. "One issue that FinCEN frequently hears about from financial services industry regarding information sharing is the scope of their safe harbor for information sharing under section 314(b). The statute currently only provides safe harbor from liability for disclosing information under the section for activities that may involve terrorist activities. Activities that are predicate offenses for money laundering are not explicitly included in the provision."

So, series of activities that could lead to money laundering. So when we provided the Patriot Act, we basically said, "Hey, we're going to kind of stretch the perimeters of our civil liberties here, because we really want to get after terrorists." Then we said, "Well, let's go a little deeper because these things might actually lead to that."

So, what kind of safeguards are in place? I mean, historically, that was a warrant or a subpoena. You get all these information; people are requiring it, could you go into some of the safeguards that protect civil liberties in this?

EL-HINDI: So, you know, in terms of the 314, we have -- 314(a), which is about the government sharing information, you know, back and forth between industry and government. And 314(b) which enables the institutions to share with one another.

The 314(a) authorities as we put them in place -- you know, we've been -- again, I mentioned before, we are between law enforcements and the financial sector.

You know, we -- part of our responsibility is to make sure that when we're putting out requests from law enforcements for information, we do that in a responsible manner.

DAVIDSON: Do those requests from law enforcement come in the forms of warrants or subpoenas?

EL-HINDI: They come to us not in warrants or subpoenas; they come to us with respect to ongoing significant investigations. Keep in mind that the requests come to us and under 314(a), we are -- you know, we're able to send that information out to financial institutions, they then say whether or not they have anything that meets...

DAVIDSON: So right now, this is a little bit, let's go fish, and say, got any transactions with this?

EL-HINDI: And -- but after that, when law enforcements reaches out to the financial institution, they then proceed with, you know, engaging with them in a normal course...

DAVIDSON: This isn't yet -- this isn't yet personalized in some cases where it's just like, we have this big set of data, and we just say, "Hey, do we have any transactions that look like, you know, clubs, getting clubs, you know, to put it in, go fish language, clubs, hearts or diamonds." So whatever the perimeter is that you're looking for. And then you go, "Yeah, we've got these five people that have completed a transaction like that." Or is it instead personalized and you go, "I'm looking for this person right here or this LLC?"

EL-HINDI: The way the requests come to us, they are going to much more particular and that, you know, again, the particular information we receive from law enforcement, it revolves their investigations is, you know, the names are shared with the financial institutions. And they say, do you have transactions, where these individuals or entities are involved or do you have accounts?

If they say, yes or no, then law enforcement is able to follow-up with them. It's a very efficient system, I think that, you know, one of the things that over the course of time, because we've been able to meet out the requests and, you know, work with the financial institutions on it, it's worked very well for law enforcements.

DAVIDSON: Yes.

EL-HINDI: They have been -- you know, the average connection of identifying, you know, ways in which they can expand their accounts -- for every -- for every request they make, they are able to identify roughly 50 transactions or accounts of interest.

DAVIDSON: That they flag...

EL-HINDI: They've targeted...

DAVIDSON: Thank you for that, and most of that is A. B, you highlight some of the categories...

EL-HINDI: Right.

DAVIDSON: ... under A, that are the government's interaction with the bank. But then frankly we didn't get to all the safeguards and perhaps can schedule a briefing to go into that. But then you go to the next layer, now banks can share this stuff iteratively back to another.

And I don't want to dismiss that it could be effective, but I want to understand what are the civil liberty safeguards, which is something we didn't quite get to. So, I'd like to try to schedule time with your office as follow-up.

EL-HINDI: We'd be happy to...

DAVIDSON: My time has expired.

EL-HINDI: Happy to do that.

PEARCE: The gentleman's time has expired. The chair now recognizes the gentleman from New York, Mr. Zeldin, five minutes for questions.

ZELDIN: Well, thank you Mr. Chairman, thank you Mr. El-Hindi for being here today. The issue of illicit financing and money laundering is hitting home in the most personal and tragic way in my district. Where we've seen ongoing violence perpetuated by MS-13 and other Central American gangs, taking innocent lives and threatening the safety of our schools.

Money laundering is a key tool for these violent criminal organizations, they're tearing apart peaceful communities on Long Island and across our country. It allows them to hide their drug trafficking revenue and transfer it illicitly across the border, it is how they buy weapons and fuels the growth of their dangerous criminal enterprises.

Earlier this month, we saw the senseless and tragic murders of four young men in Suffolk County, New York, which only further cemented our need to solve the gang violence crisis on Long Island and nationwide. These murders have gotten the attention of both President Trump and A.G. Sessions.

Two of the victims of these murders perpetuated by MS-13 were residence of my district, and tomorrow Attorney General Jeff Sessions will be visiting this community of Central Islip which has been shattered by these senseless murders and other acts of transnational gang violence.

Mr. El-Hindi, we know that FinCEN as the national experts on combating money laundering is playing a key role to defeat threats to America's safety and security. Now more than ever we need coordination on all fronts, so that our local law enforcements on our front lines can respond to this grave threat, working with other states and federal agencies.

My first question is asking for you to speak on the effort currently to combat the threat of MS-13?

EL-HINDI: With respect to priorities that we have in FinCEN in terms of our focus, transnational organized crime, narco-trafficking, gang activities are within those priorities. When you mentioned federal state and law enforcement working together, federal state and law enforcement all have access to the data that FinCEN has and they all have access to the support that we can provide. To the extent that law enforcements is focused in terms of investigations and gang activity, we are there to support them and make sure that they have the best use of the information that we have.

ZELDIN: Can you walk me through how FinCEN flags suspicious financial activity at the local level and then shares this Intel with local law enforcements, especially dealing with transnational and criminal organizations like MS-13?

EL-HINDI: So, we have memorandum of understanding that allows access to our database at the federal level, at the state level, and in many situations at the local level with certain municipalities. When we have -- when we have an MOU with the municipality, they have direct access to the data, and many instances, however, they can work through a state coordinator to have access to the data as well.

In terms of the products that we put out, where we identify a methodology or trend, those can go out to a wide variety of our law enforcement stakeholders.

ZELDIN: The Bank Secrecy Act puts the onus of reporting suspicious financial activity on banks, but what about violent gangs that are increasing using apps and other technology, prepaid cards and various other non-bank instruments to launder money? How is FinCEN intercepting and monitoring those transactions and working with the local agencies on that front?

EL-HINDI: So we cover more than just banks. You know, money transmitters are subject to our regulations and some of the methods that you mentioned for moving money electronically that might involve apps, you know, to the extent that that activity gets into the realm of money transmission which it often does. Those financial institutions, we consider them financial institutions, are covered under the scope of our requirements.

They're required to file suspicious activity reports, they're required to have programs in place to enable them to identify illicit activity and make themselves resilient to that. So that is the type of information that will go into the database. In terms of new methods for example, FinCEN clarified in 2013 that virtual currency was -- exchangers, administrators of virtual currency are actually money transmitters and subject to the scope of our regulations. And we find that by working with that industry, we are able to get valuable information to law enforcements.

ZELDIN: Well, I appreciate that, and we certainly have law enforcements from all different levels of government and electors and community leaders, everyone is engaged and it's a very important issue in Suffolk County. Again as I mentioned, A.G. Sessions is coming to Suffolk County tomorrow.

The president himself often talking about this issue that is in our community in Suffolk, so anything that you can possibly do to be able to assist with this effort, it's an urgent effort for my local community and I'll certainly appreciate all of your help.

I yield back.

EL-HINDI: Thank you.

PEARCE: The gentleman yields back. And the chair now recognizes the gentleman from California Mr. Ross; the Chairman of Foreign Affairs Committee and a member of the full committee for five minutes.

ROSS: Thank you very much Mr. Chairman, I appreciate that. Mr. El-Hindi, in November the Treasury Department acknowledged to Congress that it was seeking to detail 15 of FinCEN personnel to the Office of Intelligence and Analysis on a temporary basis. This committee raised concerns about the impact of the reorganization on Treasury's ability to disrupt and inhibit the financing of terrorism and other financial crimes.

It was also a puzzling development in light of the fact that the Obama administration had requested an increase in FinCEN's 2017 budget to expand the use of contractors to support FinCEN's effort to disrupt the financing of terrorists groups including ISIS.

So Mr. El-Hindi, can you provide the committee with an update on the reorganization and how it is impacting your work? Is the Trump administration supportive or aware of the changes that their predecessor made shortly before leaving office?

EL-HINDI: I can just provide you with a little bit of context in terms of within Treasury...

ROSS: That'd be helpful.

EL-HINDI: A focus on -- I mentioned in my testimony that we are one of five components that report to the undersecretary for terrorism financial intelligence.

There were thoughts about how we could all work better together, one aspect of that involved the idea of detailing staff from FinCEN to another component part, the status of that has not occurred.

ROSS: Let me ask you another question, in its advisories, FinCEN recommends U.S. financial institutions use risk-based policies, procedures and practices regarding jurisdictions with anti-money laundering deficiencies. This is appropriate but some institutions would argue that the Federal Banking Regulators do not themselves use the risk-based approach when they develop AML, CFT reporting requirements. To the contrary, many bankers complain that their regulators take a dragnet approach focused on burdensome, and in their view, time-consuming reporting inputs over quality outcomes.

So, Mr. El-Hindi, is it fair for FinCEN to ask financial institutions to meet a standard that the regulators do not meet? Would you agree with the clearing house's conclusion that many if not most of the resources devoted to AML/CFT by the financial sector have limited law enforcement or national security benefit? That would be one question that I would ask.

And what can Congress do to refocus the Bank Secrecy Act and other legal tools on outcomes over inputs?

EL-HINDI: I'll just respond to that by noting that I personally and FinCEN generally have talked about the fact that along with risk based approach on the financial industries part in terms of, you know, complying with our regulations, there should be a risk-based approach to regulation as well. We've been very clear on that and to the extent that we have to make decisions on the industries or the types of activities that we fold within the scope of our regulations, that risk-based approach to regulation is very much a part of it.

A number of things were raised in the clearing house reports that you mentioned, you know, I think it's an example of a situation where industry reaches out to discuss concerns that they have with respect to how situations could be improved. FinCEN has always been eager to work with the industry and discuss those ideas.

We have a forum called the Bank Secrecy Act Advisory Group, where we are able to bring together law enforcements, regulatory community and industry sector together with us where we can have very frank and opened discussions about what is working, what is not working. A lot of these issues -- a lot of the issues that are raised in the paper that you mentioned are things that we discuss and are working on within that context.

But we have -- we have always been eager to work with industry and law enforcement to make sure that we're on the right track, and that we're doing the right things.

That's why we have -- I continue to say that we are a bridge between both worlds to the extent that neither is completely satisfied with the results that we sometimes come up with. It probably is an indication that we're doing the right thing.

ROSS: Mr. El-Hindi, thank you very much, I yield back.

PEARCE: The gentleman yields back. Mr. El-Hindi, you've been very gracious with your time, if you could spare just a couple of more minutes. You're part of a group of about 150 FIUs worldwide, of those, which would you estimate has probably the best information technology sharing?

EL-HINDI: I'm not in a position right now to comment on particular jurisdictions. You know, we have strong relationships with many of our FIU partners and there are other relationships that we would like to improve. At the same time, there are -- some of our FIUs that are in great shape in terms of their ability to do things, you know, and others that would need to improve.

We, you know -- in some of the rule-making that we have discussed, if you go through past FinCEN records, you can see a close involvement that we have with our Canadian counterparts, our Australian counterparts, other counterparts as well. But I'm not in a position to comment on the strengths and...

(CROSSTALK)

PEARCE: If you -- if you could reach out and grab someone's technology and put it into FinCEN, whose would that be, do you have an opinion about that?

EL-HINDI: I'm not in a position to comment on that right now. I would just say that one of the great things about being an FIU and having a forum where we can compare the tools that we have, and the authorities that we have, is that it does create opportunities for us to think along those lines. And that happens.

I mentioned virtual currency earlier today, when we came out with our interpretation of virtual currency. Our FIU counterparts from other jurisdictions were on the phone and we were comparing notes and in terms of how we approach that situation. Same could be true with respect to the technology as well, and we do have workshops with them in which we can compare ideas.

PEARCE: And if you're going to take a guess, and again these are highly speculative things, how many of the 150 would like to take ours and implement it? I'm still trying to drive that original question I asked way back.

EL-HINDI: How many of the 150...

PEARCE: Would they -- would like to use our technology instead of the ones they have, have three course, all of them.

EL-HINDI: I would -- you know, given...

PEARCE: I was trying to figure out kind of where we stand in the world as far as our expertise and our capabilities from the IT point, not the human capacity.

EL-HINDI: I think that we are up there, but others are up there as well.

PEARCE: OK. So, we're in the top 10 percent or so? To 30 percent?

EL-HINDI: I will just say we are up there, and others are up there as well.

(LAUGHTER)

PEARCE: You've been very gracious. We appreciate everything, and I'd like to thank you for your testimony today and answering all the questions.

Without objection, all members will have five legislative days within which to submit additional written questions for the witness to the chair, which will be forwarded to the witness for his response. I'll just ask that the witness would respond as promptly as able.



This hearing is adjourned.

EL-HINDI: Thank you.

END

May 01, 2017 11:59 ET .EOF