



ASSISTANT SECRETARY
FOR LEGISLATIVE AFFAIRS

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

September 2, 2022

The Honorable James Comer
U.S. House of Representatives
2410 Rayburn House Office Building
Washington, DC 20515

Dear Ranking Member Comer:

I write in response to your requests for information reported to the Treasury Department under the Bank Secrecy Act (BSA). The Department deeply respects the critical oversight role of Congress and remains committed to responding to appropriate requests from committees of jurisdiction.

Safeguarding BSA information is critical to law enforcement efforts to investigate money laundering, terrorist financing, and other illicit financial activity. Your correspondence references bipartisan congressional interest in how the Executive Branch protects such sensitive information. As you may know, the Department wrote to Chairwoman Maxine Waters of the House Financial Services Committee earlier this year to provide background on the steps the Department takes to produce BSA information requested by Congress and the safeguards in place to prevent unauthorized use or disclosures that could undermine law enforcement, national security, and intelligence activities. I write to provide you with the same background.

Congress enacted the BSA to help effectively crack down on illicit financial activity. The law's express purposes include preventing the laundering of money and the financing of terrorism, facilitating the tracking of money that has been sourced through criminal activity, assessing fraud risks to financial institutions to protect the financial system from criminal abuse, and requiring the reporting of information that would be "highly useful in criminal, tax, or regulatory investigations, risk assessments, or proceedings" or "intelligence or counterintelligence activities, including analysis, to protect against terrorism." 31 U.S.C. § 5311. Financial institutions must report any "suspicious transaction relevant to a possible violation of law or regulation." 31 U.S.C. § 5318(g)(1); 31 C.F.R. § 1020.320.

These suspicious activity reports (SARs) and other BSA reports filed with the Financial Crimes Enforcement Network (FinCEN) contain details of financial transactions and other sensitive, nonpublic information. This is preliminary and unverified tip-and-lead information on possible violations of law. Law enforcement relies on this information to help identify, stop, and apprehend criminal actors. Thus, it is critical that the Executive Branch continue to receive the information and keep it confidential. Unauthorized use or disclosure of confidential information—whether intentional or inadvertent—can also undermine potential or ongoing investigations or proceedings. In addition, unauthorized use or disclosure of unverified information can unfairly

damage the reputation of individuals, businesses, or other organizations. Ultimately, the disclosure or improper use of this highly sensitive information can undermine the BSA's statutory purposes and the Executive Branch's conduct of law enforcement, intelligence, and national security activities.

Given the critical need to protect this information, the BSA generally prohibits its disclosure except as specifically authorized by statute or regulation. For example, the law makes it unlawful for current and former employees of a financial institution to "notify any person involved in the transaction that the transaction has been reported or otherwise reveal any information that would reveal that the transaction has been reported." 31 U.S.C. § 5318(g)(2)(A)(i). Current and former employees of the federal government—or any state, local, tribal, or territorial government—are bound by the same prohibition except to the extent necessary to fulfill their official duties. *Id.* § 5318(g)(2)(A)(ii). Violations of the BSA's confidentiality requirements can carry substantial civil and criminal penalties. *See* 31 U.S.C. §§ 5321, 5322.

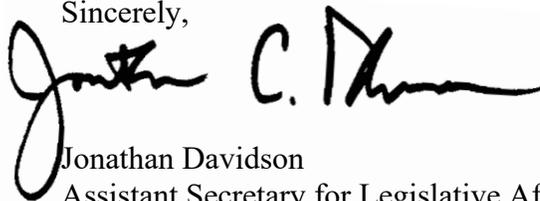
The Department takes seriously its responsibility to safeguard BSA information, and it has provided regulatory guidance on BSA confidentiality for decades. *See* 31 C.F.R. § 1010.950; *see also* Financial Recordkeeping and Reporting of Currency and Foreign Transactions, 36 Fed. Reg. 11208, 11210 (1971). The current regulation provides, for example, that the Department may make BSA information available to a member of the Intelligence Community "upon the request of the head of such department or agency made in writing and stating the particular information desired, the national security matter with which the information is sought and the official need therefor." 31 C.F.R. § 1010.950(d). A similar provision governs requests from state, local, and foreign governments. *Id.* § 1010.950(b). The information provided under those sections must be received "in confidence" and "shall not be disclosed to any person except for official purposes relating to the investigation, proceeding or matter in connection with which the information is sought." *Id.* § 1010.950(e). Indeed, FinCEN imposes strict restrictions on the access, use, or re-dissemination of the data by recipient agencies as well as audits and inspection controls to prevent and detect violations. FinCEN also requires training for users of BSA information, including on statutory civil and criminal penalties for disclosures.

The BSA mandates the sharing of this highly sensitive information only with other agencies, for limited purposes and subject to restrictions on further disclosure. *See* 31 U.S.C. § 5319. The Department amended its "availability of information" regulation in 1987, under Secretary James A. Baker, to reflect the Secretary's discretion to provide BSA information to Congress in appropriate circumstances. *See* 52 Fed. Reg. 35544, 35545 (1987). Under the current regulation, the Secretary may make BSA information available to "Congress, or any committee or subcommittee thereof, upon a written request stating the particular information desired, the criminal, tax or regulatory purpose for which the information is sought, and the official need for the information." 31 C.F.R. § 1010.950(c). These decisions are entrusted to the Secretary's discretion. *See id.*; *see also* 31 U.S.C. § 5318(a)(7); 31 C.F.R. § 1010.970(a); *id.* § 1010.950(a). It is important that a requesting committee provide a detailed statement of its purpose in seeking to obtain the requested information and the use it intends to make of it so that the Secretary can make a determination as to whether the disclosure is consistent with the purposes of the BSA and longstanding Executive Branch interests like the protection of ongoing law enforcement investigations.

The Department responds to requests for BSA information from congressional committees of appropriate jurisdiction in a manner consistent with the statute and its implementing regulations, which mandate protection of highly sensitive reports from the risk of unauthorized use and disclosure. For example, the Department produces BSA information *in camera* as a mechanism to make reports available for review while protecting their confidentiality. We work to meet Congress's requests while respecting the sensitive nature of the information. This includes making information available in reading rooms at congressional offices and at convenient times for congressional staff, providing electronic laptop access to voluminous information, and engaging with staff on any follow-up requests. We believe that producing BSA information in this manner is a reasonable and responsive approach that also fulfills the Department's obligation to protect the confidential nature of the material. In this way, the Department preserves the integrity of law enforcement investigations, protects privacy, and helps ensure that the BSA remains highly effective in addressing illicit financial activity.

The Department is committed to responding to congressional requests for BSA information in an appropriate manner. Congress plays a critical role in effective oversight, and we will continue to work with you on these issues. If you or your staff have further questions, please contact Treasury's Office of Legislative Affairs at (202) 622-1900.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan C. Davidson". The signature is fluid and cursive, with a large initial "J" and "D".

Jonathan Davidson
Assistant Secretary for Legislative Affairs

cc: The Honorable Carolyn Maloney, Chairwoman
Committee on Oversight and Reform