

FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 2023

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

NONDEPARTMENTAL WITNESSES

[CLERK'S NOTE.—The subcommittee was unable to hold hearings on nondepartmental witnesses. The statements and letters of those submitting written testimony are as follows:]

PREPARED STATEMENT OF THE AMERICAN FRIENDS SERVICE COMMITTEE (AFSC)

Chairman Van Hollen, Ranking Member Hyde-Smith, and Members of the Committee, thank you for the opportunity to submit testimony. My name is Daniel Jasper and I am the Asia Public Education and Advocacy Coordinator for the American Friends Service Committee (AFSC). We are a peace and social justice organization that has worked for over a hundred years to address the root causes of violence and conflict throughout the world. We appreciate the opportunity to address the use of sanctions before the subcommittee today, as this foreign policy tool now serves as a primary response to geopolitical conflict. Specifically, my testimony addresses (1) report language addressing the need for the Government Accountability Office (GAO) to conduct impact assessments on comprehensive sanctions regimes, and (2) the need for the Treasury Department's Office of Foreign Assets Control (OFAC) to conduct regular and comprehensive reporting on licensing procedures.

The urgency and importance of conducting impact assessments on comprehensive sanctions regimes cannot be understated. In 2021, The Treasury Department's sanctions review found that sanctions designations have risen from 912 to 9,421 in the last two decades, representing an increase of 933%.¹ However, despite this accelerating rate of usage, government agencies have indicated that the impact of sanctions is often unclear.

According to a 2019 GAO report, implementing and relevant agencies only conduct ad hoc assessments and do not monitor "the overall effectiveness of existing sanctions programs in achieving broad policy goals." The report found that officials only "informally" evaluate the overall efficacy of these measures. However, given the immense impact of sanctions on ordinary civilians and the global economy, informal evaluations are grossly insufficient. Notably, officials indicated that one major reason for the lack of comprehensive assessments is that "there is no policy or requirement" for this type of analysis.² It's clear, then, that until Congress enacts such a policy, the executive branch is unlikely to undertake such critical assessments on its own accord.

Throughout AFSC's more than one hundred-year history, the organization has accompanied countless communities under sanctions regimes and borne witness to the varied impacts of these measures. Our organization, for instance, was among the first to support South Africans in their call to sanction the apartheid regime. While

¹ 2021 Sanctions Review. U.S. Department of Treasury, Oct. 2021, <https://home.treasury.gov/system/files/136/Treasury-2021-sanctions-review.pdf>.

² Economic Sanctions: Agencies Assess Impacts on Targets, and Studies Suggest Several Factors Contribute to Sanctions' Effectiveness. U.S. Government Accountability Office, Oct. 2019, <https://www.gao.gov/assets/gao-20-145.pdf>.

the case of South Africa has been considered a success, we have found that critical to that success was that it was led by the impacted communities themselves.

Conversely, we have seen that the impacts of these measures are far more damaging when implemented unilaterally and without the support of the local population. In recent decades, the U.S.’ propensity to unilaterally impose comprehensive sanctions without the support of local civil society efforts has created large pockets of vulnerable communities throughout the world.

These communities—in many cases entire nations like the Democratic People’s Republic of Korea (or “North Korea”), Iran, Venezuela, and Cuba—are left in a State of arrested and reversing development. Given the mounting global challenges such as the COVID-19 pandemic and global food supply chain disruptions, these communities represent an open wound on the collective body of humanity. It is in these conditions that viruses mutate, conflict arises, human rights are violated, humanitarian crises develop, and violent ideologies take root. It is, therefore, imperative that the subcommittee act to fill this immense gap in monitoring and evaluation as policymakers must understand the true impacts of these widespread tools.

Here, I would like to stress that while administration officials have stated that there are humanitarian exemptions for comprehensive sanctions regimes, in practice these exemptions are insufficient for aid operations and peacebuilding initiatives.

For instance, AFSC has operated the longest-standing NGO program in North Korea since 1980. Prior to the pandemic, our program worked to improve conservation agricultural techniques in four cooperative farms outside of the capital city of Pyongyang. These activities had over 84,000 direct and indirect beneficiaries as we worked to improve food access for local communities.

We have witnessed many impacts of sanctions in our work on the ground in places like North Korea such as a chronic shortage of basic supplies, increases in manual labor, decreases in the availability of transportation and fuel, and a general attitude of resentment toward the U.S. government. A recent and dramatic example of the impact of sanctions was the increasingly restricted space for the delivery of humanitarian assistance since 2017.

As a consequence of the U.S.’ “maximum pressure” campaign and a U.S.-led UN sanctions resolution, we witnessed deeply disturbing situations where lifesaving assistance to North Korea was delayed or denied by bureaucratic procedures. In at least 42 instances, aid operations were severely disrupted even in cases where agencies obtained the correct paperwork. This resulted in patients undergoing surgery without anesthesia, children going without nutritional assistance, and increased mortality risks for a population already on the margins. While some of these issues have been resolved, the damage to key humanitarian channels had been done; relationships and operations were largely unable to recover in the years leading up to the pandemic.³

As the COVID-19 outbreak erupted in China in early 2020, North Korea largely closed its borders to incoming travel and cargo and has continued these border closures throughout the first half of 2022. Despite a “maximum pressure” campaign and over 2 years of a self-imposed embargo, North Korea’s missile and weapons development programs—a primary target of sanctions measures—continue unabated. Instead, AFSC has witnessed that it is the ordinary people, who have no say in their government’s actions, that often bear the true cost of sanctions.

In 2019, Korea Peace Now, a global movement of women mobilizing to end the Korean War, commissioned one of the few assessments of the impact of sanctions on citizens. The study found that “[s]anctions destabilize North Korean society in ways that have a disproportionate impact on women, resonating with patterns observed in other sanctioned countries. The resulting economic pressure tends to exacerbate rates of domestic violence, sexual violence, and the trafficking and prostitution of women.”⁴ These types of impacts on the human rights and humanitarian situations of local communities are seldom captured by the “informal” impact assessments offered by administration officials.

At the beginning of the Biden administration, 55 nongovernmental organizations—representing over 65 million supporters—sent a letter to the President outlining urgently needed sanctions reforms. Among the key recommendations included

³ Jasper, Daniel. “Why the World Should Care about the COVID Outbreak in North Korea—38 North: Informed Analysis of North Korea.” 38 North, 27 May 2022, <https://www.38north.org/2022/05/why-the-world-should-care-about-the-covid-outbreak-in-north-korea/>.

⁴ “The Human Cost and Gendered Impact of Sanctions on North Korea.” Korea Peace Now. Oct. 2019, <https://koreapeacenow.org/wp-content/uploads/2019/10/human-costs-and-gendered-impact-of-sanctions-on-north-korea.pdf>.

in the letter was the need to institute “ongoing reporting protocols that monitor the impact and human cost of sanctions.”⁵

The administration has not taken action on these reforms to date, and with millions of lives in the balance, Congress must champion the voice of civil society and institute common sense monitoring policies. We strongly urge the subcommittee to adopt report language requesting impact assessments on all comprehensive sanctions regimes from the GAO.

In many heavily sanctioned contexts such as North Korea, it is now routine for aid operations to go through extensive OFAC licensing procedures to send aid shipments. Throughout my tenure at AFSC, I have seen this process take anywhere from 9 months to 2 years.

The application process is strenuous—often filled with vague guidance on high-stakes procedures. Communication and status updates are typically infrequent from OFAC and the process requires the aid of expensive legal counsel. Further, OFAC staff turnover and/or the sheer volume of applications mean that we are continuously educating policymakers and bureaucrats about our work. This means that in moments of humanitarian crisis (and sometimes in moments of geopolitical opportunity), aid workers are spending precious moments navigating red tape and rehashing the most basic elements of longstanding programs instead of responding to critical situations.

Consistent with the Treasury Department’s commitment to “modernizing” sanction regimes and supporting legitimate humanitarian actors,⁶ OFAC must begin regular and transparent reporting on licensing procedures. Moreover, making this data publicly available would improve the speed and consistency of these processes, reduce humanitarian response time, and improve our collective understanding of the impacts of sanctions on civilians.

Amid increasing global security challenges, sanctions have emerged as a primary tool of the U.S. in dealing with its adversaries. These tools are sometimes enacted with an alarmingly cavalier attitude toward their potentially devastating human impact, and with a severe lack of oversight. Given the widespread nature of these instruments, their impact on the global economy, and the hundreds of millions of lives they impact, we urge you to support these proposals in order for the U.S. government and public to fully understand the consequences of these policies.

PREPARED STATEMENT OF COALITION FOR A PROSPEROUS AMERICA (CPA)

Dear Chairman Van Hollen and Ranking Member Hyde-Smith:

For the reasons outlined below, the Coalition for a Prosperous America (CPA) strongly urges the subcommittee on Financial Services and General Government to approve an increased appropriation for the Financial Crimes Enforcement Network (FinCEN) to \$210.3 million for the Fiscal Year 2023. CPA is concerned the Corporate Transparency Act (CTA) will not be implemented promptly without these resources. The CTA prioritized our National security by denying the most egregious means of obscuring the actual owners of different types of property.

The Coalition for a Prosperous America is a nonprofit, nonpartisan organization that represents the interests of domestic producers across the country engaged in agricultural production, agribusiness, and many manufacturing supply chains. We are concerned about foreign intellectual property theft, offshoring of industry, and the decline of the quality of jobs in the US due to the loss of supply chains.¹

FINCEN NEEDS TO IMPLEMENT THE CORPORATE TRANSPARENCY ACT

The FinCEN, tasked with codifying and implementing the CTA, has already missed deadlines due to resource shortages.² Therefore, CPA strongly supports the subcommittee on Financial Services and General Government approving increased appropriations for the Financial Crimes Enforcement Network (FinCEN) to \$210.3 million for the Fiscal Year 2023.

⁵“Civil Society Groups Call on Biden to Provide Immediate Sanctions Relief and Legal Reform.” American Friends Service Committee, 26 Mar. 2021, <https://www.afsc.org/newsroom/civil-society-groups-call-biden-to-provide-immediate-sanctions-relief-and-legal-reform>.

⁶2021 Sanctions Review. U.S. Department of Treasury, Oct. 2021, <https://home.treasury.gov/system/files/136/Treasury-2021-sanctions-review.pdf>.

¹About page Coalition for a Prosperous America. <https://prosperousamerica.org/about/>.

²Das, Himamauli, US Treasury FinCEN Acting Director, Statement before U.S. House of Representatives Financial Services Committee. April 28, 2022. <https://financialservices.house.gov/uploadedfiles/hhrg-117-ba00-wstate-dash-20220428.pdf>.

Congress passed the Corporate Transparency Act in 2020 as part of the Anti-Money Laundering Act. This bipartisan landmark legislation sought to improve anti-money laundering laws and deny the benefits of anonymous shell companies.

Hidden ‘beneficial’ owners include foreign kleptocrats and criminals who pose a grave security threat to the United States. Our recent attempts to hold Russian kleptocrats accountable for the invasion of Ukraine exposed our vulnerability and our need to strengthen our economic borders.’ American producers need information regarding the competition they face from autocratic non-market foreign owners.

KLEPTOCRACY THREATENS AMERICA’S FINANCIAL INDEPENDENCE

The FinCEN advisory on Kleptocracy and Foreign Public Corruption (FIN-2002-A001), released on April 14, 2022, specified that “Kleptocratic regimes and corrupt public officials may engage in bribery, embezzlement, extortion, or the misappropriation of public assets, among other forms of corrupt behavior, to advance their strategic, financial, and personal goals.”³

These behaviors are not limited to the country of the foreign kleptocrats. Once a US financial enterprise becomes involved with these tainted funds, the enterprise has a vested interest in promoting a continued relationship for the sake of management of this “property.” The vested self-interest divides the financial enterprises’ allegiance from the United States’ competitive economy, moral values, and even the Nation’s national security interests.

Consider the problems concerning London’s enmeshing with Russian kleptocrats. A former Russian correspondent, Oliver Bullough, gives “kleptocracy tours” in the capital of the United Kingdom, showing how illicit funds affected the city.⁴ Despite criminal activities, including the 2018 poisoning of Sergei Skripal and his daughter on United Kingdom soil by Russia’s leader Putin, British elected officials took few actions against the Russian kleptocrats until the invasion of Ukraine. In effect, London’s political class was a willing hostage because it had become dependent on kleptocrat money.

With a GDP of over £500 Billion (just under \$650 billion) in 2020,⁵ London’s economic size did not guarantee protection against this form of foreign political manipulation. In 2020, only 10 of our 50 American States had a greater GDP than London.⁶ It is no small leap to assume entire American States are vulnerable when we do not know the identities of the beneficial owners of investments in the United States.

Meanwhile, our intended sanctions revealed how ill-prepared the US financial system is to respond to actions like Russian aggression. When the White House announced its comprehensive legislative package to hold the Russian government and oligarchs accountable for President Putin’s war against Ukraine, Russian forces had invaded Ukraine for over 2 months.

The White House proposal had to take time to streamline specific ways to enable the seizure and implementation of the sanctions because they had been playing a game of whack-a-mole with Russian kleptocrat funds. In the future, these mechanisms should be easy to implement and clearly outlined against any hostile power. FinCEN’s work is essential to simplifying the knowledge of foreign-based beneficial ownership in the United States.

Despite the successful bipartisan efforts to pass the Corporate Transparency Act, its implementation must be accelerated, not restricted. FinCEN is too underfunded to be effective in its current funding state, and that weakness in our economic infrastructure must end.

Russian kleptocrats are not the final concern as a price for our lack of financial transparency. Any autocratic government seeking to manipulate the United States would have good reason to use their wealthy kleptocrats to invest in it. Chinese “greenfield” investments have already been a significant concern to members of the

³ Advisory on Kleptocracy and Foreign Public Corruption. US Treasury, FinCEN April 14th, 2022. <https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2022-a001>.

⁴ Keefe, Patrick Radden. How Putin’s Oligarchs Bought London. New Yorker Magazine. March 28th, 2022. <https://www.newyorker.com/magazine/2022/03/28/how-putins-oligarchs-bought-london>.

⁵ Gross domestic product of the United Kingdom in 2020, by region (in million GBP). Statista. <https://www.statista.com/statistics/1004135/uk-gdp-by-region/>.

⁶ Gross Domestic Product by State, 4th Quarter 2020 and Annual 2020 (Preliminary). US Commerce, Bureau of Economic Analysis. <https://www.bea.gov/sites/default/files/2021-03/qgdpstate0321.pdf>.

Senate.⁷ These Chinese-held subsidiary investments can use corporate anonymity to disguise non-market intent.

The Coalition for a Prosperous America contends that the US underestimates our National producers' competition with non-market firms that sacrifice market-based results in exchange for future monopoly dominance or illicit political capital due to a lack of information.

The Coalition for a Prosperous America does not directly oppose foreign financial investment. But it is crucial to know which foreign citizens of autocratic regimes own what property, how much is held, for what purpose, and how much wealth ends up in foreign jurisdictions.

Therefore, the Coalition for a Prosperous America urges the subcommittee on Financial Services and General Government to approve an increased appropriation for the Financial Crimes Enforcement Network (FinCEN) to \$210.3 million for the Fiscal Year 2023. The Corporate Transparency Act (CTA) prioritized our National security, but the necessary regulation and enforcement need these resources to implement the will of Congress as soon as possible.

Sincerely,
David Morse, Tax Policy Director
Coalition for a Prosperous America

PREPARED STATEMENT OF COALITION FOR INTEGRITY

Dear Chairman Van Hollen and Ranking Member Hyde-Smith:

We at Coalition for Integrity support and encourage the subcommittee on Financial Services and General Government to approve increased appropriations for Financial Crimes Enforcement Network (FinCEN) in line with the President's budget request for the 2023 fiscal year.¹

Coalition for Integrity is a non-profit, non-partisan 501(c)(3) organization. We work in coalition with a wide range of individuals and organizations to combat corruption and promote integrity in the public and private sectors both in the United States and internationally. An important area of focus for us is ending impunity for corrupt public officials and oligarchs around the world. We have previously submitted comments to FinCEN on a proposed rule that would address the vulnerability of the U.S. real estate market to money laundering and other illicit activity.² We have also submitted comments on notice of proposed rulemaking (NPRM) to implement the beneficial ownership reporting requirements in the Corporate Transparency Act (CTA).³

FinCEN remains one of the leaders entrusted with combatting illicit finance and addressing deficiencies in the anti-money laundering regime in the first U.S. Strategy on Countering Corruption.⁴ FinCEN's work is critical to keep the proceeds of corruption and other crimes from being laundered through the U.S. financial system. Deputy Secretary of the Treasury Wally Adeyemo expressed during his testimony before the subcommittee on Financial Services and General Government, the U.S. Treasury has "taken unprecedented measures . . . [but] these new actions and initiatives require substantial resources" to conduct the necessary analysis and produce a global response.⁵ These remarks echo FinCEN Acting Director Himamauli

⁷ Senator John Kennedy. Kennedy introduces bill to increase scrutiny over Chinese investments on U.S. soil. Press Release. October 21, 2021. <https://www.kennedy.senate.gov/public/2021/10/kennedy-introduces-bill-to-increase-scrutiny-over-chinese-investments-on-u-s-soil>.

¹ The White House, Budget of the U.S. Government: Fiscal Year 2023, Feb. 2022, https://www.whitehouse.gov/wp-content/uploads/2022/03/budget_fy2023.pdf.

² The letter was written in response to FinCEN's request for comment. See Letter from Shruti Shah, President & CEO, Coalition for Integrity, to Himamauli Das, Acting Dir., FinCEN, U.S. Department of the Treasury (Feb. 21, 2022), <https://www.coalitionforintegrity.org/wp-content/uploads/2022/02/C4I-FinCEN-Comments-Feb-21-Real-Estate-Final.pdf>; see also FinCEN, 86 Fed. Reg. 69, 589 (Dec. 8, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-12-08/pdf/2021-26549.pdf>.

³ See Letter from Shruti Shah, President & CEO, Coalition for Integrity, to Himamauli Das, Acting Dir., FinCEN, U.S. Department of the Treasury (Feb. 7, 2022), <https://www.coalitionforintegrity.org/wp-content/uploads/2022/02/FinCEN-Comments-Feb-7-Final.pdf>.

⁴ The White House, U.S. Strategy on Countering Corruption, Dec. 2021, <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>.

⁵ U.S. Department of the Treasury, Testimony of Deputy Secretary of the Treasury Wally Adeyemo before the subcommittee on Financial Services and General Government, Committee on Appropriations, U.S. Senate, June 14, 2022, <https://home.treasury.gov/news/press-releases/jy0815>.

Das' testimony before the House Financial Services Committee where he explained that "while the AML Act made significant improvements to the AML/CFT framework, these improvements come at a cost. FinCEN employs a team of about 300 dedicated employees, including intelligence analysts, investigators, AML/CFT policy strategists, enforcement and compliance officers, outreach specialists, data analysts, regulators, and economists . . . [yet] FinCEN has significant staffing requests that remain unfunded."⁶

The Strategy on Countering Corruption recognizes the real estate and private investment sectors are vulnerable to abuse by illicit actors seeking to launder the criminal proceeds.⁷ FinCEN is responsible for rulemaking in these sectors as well as implementing the beneficial ownership transparency rule of the CTA.⁸ FinCEN's role continues to grow as it follows the money.⁹

The Coalition for Integrity urges the subcommittee on Financial Services and General Government to approve the full \$210.3 million in order for FinCEN to fulfill its duties to combat money laundering and its related crimes such as terrorism and promote national security.¹⁰ Coalition for Integrity also endorses FACT Coalition's letter in support of increased FY 2023 appropriations for FinCEN.

Thank you for your time and consideration. Please contact me with any questions at sshah@coalitionforintegrity.org.

Sincerely, Shruti Shah
President & CEO Coalition for Integrity

⁶Statement by Himamauli Das Acting Director Financial Crimes Enforcement Network U.S. Department of the Treasury before Committee on Financial Services, U.S. House of Representatives, 12 (April 28, 2022), <https://financialservices.house.gov/uploadedfiles/hhrg-117-ba00-wstate-dash-20220428.pdf>.

⁷Supra note 4 at 22.

⁸FinCEN, 86 Fed. Reg. 69, 589 (Dec. 8, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-12-08/pdf/2021-26549.pdf>.

⁹FinCEN, What We Do, <https://www.fincen.gov/what-we-do>.

¹⁰FinCEN, Mission, <https://www.fincen.gov/about/mission>.

PREPARED STATEMENT OF CONGRESSIONAL FIRE SERVICES INSTITUTE

Dear Chairman Van Hollen and Ranking Member Hyde-Smith:

On behalf of the Nation's fire and emergency services, we write to urge your support for vital funding to enhance life safety across the country by preventing illness and death related to carbon monoxide exposure. As you consider the Fiscal Year (FY) 2023 Financial Services and General Government (FSGG) Appropriations bill, we urge you to provide \$10 million to the Consumer Product Safety Commission (CPSC) for grants required by section 204 of the Nicholas and Zachary Burt Memorial Carbon Monoxide Poisoning Prevention Act of 2022 (Public Law 117–103).

Carbon monoxide (CO) poisoning is a proven threat to Americans across the country, claiming at least 430 lives annually. Additionally, approximately 50,000 people are sent to emergency rooms every year due to unintentional poisonings, according to the Centers for Disease Control and Prevention (CDC).¹ Since CO is an odorless, tasteless, and colorless gas, many people are initially unaware they are even being poisoned.

Carbon monoxide poisoning can result in death, but it can also cause lifelong neurological and cardiac issues, in addition to other harmful, long-term health conditions. While anyone can be harmed by exposure to CO, it is especially dangerous for babies, children, elderly individuals, and individuals with preexisting chronic health conditions, such as cardiovascular disease, anemia, and respiratory issues.

The Nicholas and Zachary Burt Memorial Carbon Monoxide Poisoning Prevention Act established a grant program at CPSC to help States and local governments implement CO alarm installation programs and ensure that families across America are protected from CO poisoning. It is critical that this program is adequately funded to help mitigate the harmful—and even fatal—effects of CO poisoning.

Our organizations look forward to working with you on funding this important public safety grant program.

Sincerely,

Congressional Fire Services Institute
International Association of Fire Chiefs
International Association of Fire Fighters
International Code Council
National Association of State Fire Marshals
National Fallen Firefighters Foundation
National Fire Protection Association
National Volunteer Fire Council

[This statement was submitted by Michaela Campbell, Director of Government Affairs for the Congressional Fire Services Institute]

PREPARED STATEMENT OF DEMAND PROGRESS

Dear Chairman Van Hollen, Ranking Member Hyde-Smith, and Members of the subcommittee:

Thank you for the opportunity to submit written testimony regarding the FY 2023 Financial Services and General Government Appropriations Bill. My organization, Demand Progress, conducts research and engages in advocacy focused on strengthening Congress's ability to legislate and conduct oversight. In furtherance of this mission, I urge the Committee to direct the public disclosure of in-person and virtual visitors to the White House and the Vice President's residence, which would further Congress's oversight role and greater governmental accountability.

DISCLOSURE OF WHITE HOUSE VISITOR LOGS

Disclosure of White House visitor logs—records of in-person visitors to the White House—is an important element of government accountability and serves as a proxy for disclosure of meetings by lobbyists and special interests with government officials. These records of in-person meetings are generated by the activity of the United States Secret Service, which monitors visitors and clears them to the White

¹ <https://www.cdc.gov/nceh/features/copoisoning/index.html>.

House complex using records from two automated systems.¹ These records track visitors from the initiation of a request that they be cleared for access until the point that they exit the White House complex.

On September 15, 2009, the Obama administration began voluntarily disclosing the majority of the information in the White House visitor logs to settle then-ongoing litigation brought by civil society organizations over the issue of public access to these records under the Freedom of Information Act.² In doing so, the White House recognized the “right” of “Americans” to “know whose voices are being heard in the policymaking process.” As implemented, the posted records included names of visitors, the dates and times they entered and exited the White House compound, and the names of the White House staff requesting that they be cleared for access. (Ultimately, the Federal courts held the records are not legally Secret Service property, but rather White House records, and are thus covered by the Presidential Records Act and not the Freedom of Information Act.)

Under its disclosure policy, the Obama administration released nearly 6,000,000 records, which opened a new window into the functioning of the White House and helped inform the public, directly and through countless news stories, about who was going into the White House to meet with administration officials. This also offered opportunities for civil society groups to analyze the data in an effort to hold the administration accountable.

Experience under the Obama administration’s voluntary disclosure policy demonstrates how important these records are for public accountability. The Washington Post reported that the visitor records released by the Obama administration included “scores of lobbyists.”³ For example, one news report examining records from an “unremarkable” day in January 2012 revealed the “regular presence” of lobbyists at the White House, with “lobbyists with personal connections to the White House enjoy[ing] the easiest access.”⁴ At the same time, the Obama disclosure policy protected the interests of the president, his family, and the Nation by excluding purely personal guests of the president’s family, records implicating national security interests, and records of particularly time-sensitive meetings that were temporarily withheld.

Eight years later, President Trump closed that window when he came into the White House, leaving the public in the dark about who was going into “the people’s house” and fueling multiple lawsuits. Regardless of who is president, information about White House visitors should continue to be publicly available. These records help inform Congress and the public about those individuals and entities that seek to influence presidential decision-making and Executive branch policies, and the basic day-to-day workings of our government—the information the FOIA was designed to access and the voluntary disclosure policy was meant to address.

The Biden administration has chosen to reverse the Trump administration’s decision to discontinue the voluntary disclosure policy. This is a welcome development, but one granted at the sufferance of the current administration and liable to reversal at any time. Congress must step in to guarantee access for itself and the American people.

To that point, the House of Representatives included language in the Protecting Our Democracy Act, Section 2203 of H.R. 5314 (117th Congress), which establishes “not later than 90 days after the date of enactment of this act, the President shall establish and update, every 90 days thereafter, a publicly available database that contains covered records for the preceding 90-day period, on a publicly available website in an easily searchable and downloadable format.” While the House passed H.R. 5315 on December 9, 2021, it has yet to see any action in the Senate. The measure paralleled legislation introduced by Rep. Mike Quigley in section 602 of the Transparency in Government Act over multiple Congresses.⁵

Appropriators routinely require the administration to provide to Congress records appropriate for legislative oversight of Executive branch activities, including requiring the public disclosure of these records. White House visitor logs are quintessential oversight records. The House has already given its blessing for requiring White

¹ 18 U.S.C. §§ 3056, 3056A.

² Peter Baker, *The White House Will Disclose Visitor Logs*, New York Times, Sept. 4, 2009, available at <https://thecaucus.blogs.nytimes.com/2009/09/04/the-white-house-will-disclose-visitor-logs/>.

³ John Wagner, *Trump will keep list of White House visitors secret*, Washington Post, Apr. 14, 2017, available at <https://www.washingtonpost.com/news/post-politics/wp/2017/04/14/trump-to-discontinue-obama-policy-of-voluntarily-releasing-white-house-visitor-logs/>.

⁴ T.W. Farnam, *White House Visitor Logs Show Lobbying Going Strong*, Washington Post, May 20, 2012, available at https://www.washingtonpost.com/politics/2012/05/20/g1QA2ok4dU_story.html.

⁵ See, e.g., H.R. 2055 (117th Congress).

House visitor log disclosure and the Appropriations Committee is best positioned to vindicate Congress's will. I urge you to ensure uninterrupted congressional and public visibility into visitors to the White House and the Vice President's residence regardless of who occupies the White House. The policy adopted by the White House with respect to which records to disclose and which ones may be withheld is reasonable, by and large, and should be put into law. To that end, I recommend the following bill language that codifies the current White House policy and vindicates Congress's oversight needs and the public's right to know:

White House Visitor Logs.—Not later than 30 days after the date of enactment of this act and updated every 30 days thereafter, the White House Office of Administration shall report to the Congress, the Senate Homeland Security and Governmental Affairs Committee, the House Committee on Oversight, and make contemporaneously available online, a searchable, sortable, downloadable database of visitors to the White House and the Vice President's residence compiled in the White House Worker and Visitor Entry System that includes the name of each visitor, the name of the individual who requested clearance for each visitor, and the date and time of entry for each visitor. Notwithstanding this requirement, the White House Office of Administration, after consultation with the United States Secret Service and the President or his designee, may exclude from the database any information that would (1) implicate personal privacy or law enforcement concerns or threaten national security, or (2) relate to a purely personal guest. In addition, with respect to a particular sensitive meeting, the White House Office of Administration shall disclose each month the number of records withheld on this basis and post the applicable records no later than 365 days later.

DISCLOSURE OF WHITE HOUSE VIRTUAL VISITOR LOGS

As described above, the Biden Administration reinstated the Obama administration's policy to disclose the vast majority of records of visitors to the White House. However, many White House meetings are taking place virtually and are not covered under that policy. The move from in-person to virtual meetings in response to COVID-19 could not have been anticipated when the disclosure policy was first implemented in 2009.

The Financial Services and General Government FY 2022 Appropriations Bill Report (H. Rept. 117-79, p. 37) requested "[t]he Executive Office of the President to explore the feasibility of disclosing 'virtual' visitors to the Executive Office of the President in a manner that provides similar information as provided for other visitors and that is retroactive to January 20, 2021" and "directs EOP to provide a briefing on this topic no later than 120 days after enactment of this act."

I applaud this action from the Committee and believe access to "virtual" visitor disclosures should become a permanent practice. I encourage the Committee to move forward to direct the Executive Office of the President to provide a report on the cost and implementation of making "virtual" visitor log disclosures permanent. To that end, I recommend the following bill language:

White House Virtual Visitor Logs.—The White House Executive Office of the President, within 60 days of enactment of this legislation, shall provide a report to Congress on how it recommends implementing a requirement to make contemporaneously available online on at least a biweekly basis a searchable, sortable, downloadable database of "virtual visitors" to the White House and the Vice President's residence. A virtual visitor is a person who meets with Executive branch office staff whose normal place of work is at the White House or the Vice President's residence. This list should include the name of each visitor, the name of each person they met with, and the date and time of each meeting. This is intended to be an analogue for disclosure of White House Visitor Logs.

As part of its report to Congress, the Executive office of the President may evaluate whether to include a provision that would exclude from the biweekly public disclosure any information that would (1) implicate personal privacy or law enforcement concerns or threaten national security, or (2) relate to a purely personal guest. In those instances, the Executive Office of the President shall still disclose the total number of records on a biweekly basis, but withhold the applicable record for no more than 365 days.

The report shall also address the costs of implementing such a system.
 Thank you again for the opportunity to submit written testimony.
 [This statement was submitted by Hajar Hammado, Policy Advisor]

PREPARED STATEMENT OF HARBOR BANKSHARES CORPORATION

Chairman Van Hollen, Ranking Member Hyde-Smith, and members of the subcommittee, good afternoon. Thank you for inviting me to discuss the important work of Community Development Financial Institutions (CDFIs).

My name is Joseph Haskins. I am a founding Director, Chairman and CEO of Harbor Bankshares Corporation, headquartered in Baltimore, Maryland.

BANK HISTORY

The Harbor Bank of Maryland (Harbor Bank) opened its door for business in September of 1982. The Bank had its origin dating back to the early 1970s when Baltimore's African American leadership was seeking ways to enhance economic opportunities for minority communities in Baltimore City.

One of the major issues identified as limiting economic opportunities was the lack of access to capital and more importantly access to banking. To address these issues Harbor Bank was found.

Harbor Bank focused on providing banking services in the following areas:

- Minority Business/Commercial Lending
- Faith Based (Church Financing)
- Residential Mortgages

Increased demands for financial services coupled with increasing bank regulations required and expanded operations.

In 1992, Harbor Bank formed a holding company, Harbor Bankshares Corporation (The Corporation), allowing for additional financial services.

Establishing the holding company led to the formation of three (3) subsidiaries and a non-profit Community Development Corporation (CDC).

Today, The Corporation oversees a \$350 million Bank and subsidiaries that directly and indirectly control another \$300 million. While the Bank remains the primary subsidiary, the other operations provide the Baltimore community with access to more diverse capital and financial services.

Some of the expanded services include:

- Lower priced loans
- Equity investment support
- Financial literacy programs
- Real estate development programs
- Specialized tax benefits

Over the past thirty-nine (39) years, the significance of the Corporation and Bank to the development/revitalization of communities is evidenced by:

- The development of the Inner Harbor East where Harbor Bank was the first money to help build a hotel, office building, and residential housing.
- The Canton Community where Harbor Bank was the first money to support a residential housing project and the converting of old warehouses to office and retail space.
- East Baltimore Development Inc. (EBDI), a non-profit, was aided by Harbor Bank's seed money to help an 88-acre community known for poverty and crime to be revitalized and become livable. Johns Hopkins Science Park is a part of this community's revitalization. This community is now a national model.
- University of Maryland at Baltimore (UMAB) Science Park where Harbor Bank was the first money to support land and project development West of Martin Luther King Boulevard.

As a corporation in the financial services space, our role evolved to that of being a catalyst and advocate for revitalizing and restoring abandoned, forgotten, and disregarded communities in Baltimore.

THE HARBOR BANKSHARES CORPORATION

Harbor Bank of Maryland (CDFI)

- Founded in 1982
- MD Chartered Commercial Bank
- Minority Depository Institution
- 7 Full-Service Branches
- Broad Product Offerings for Businesses and Individuals
- SBA 7(a) Lender
- 13x Bank Enterprise Award ("BEA") Winner for Demonstrated Lending and Investment in Low-Income Communities
- Locally Owned and Managed
- \$350 Million in Assets
- FDIC designated MDI

Harbor Bank of Maryland Community Development Corporation (CDFI)

- Founded in 2001
- 509(a)(2) Public Charity
- Emerging Developer Technical Assistance Program
- 2x US SBA PRIME Awardee
- JPMorgan partner and regional leader on Entrepreneurs of Color Fund
- Minority Pre-Seed Venture Capital fund with TEDCO
- EB-5 Immigrant Investor Regional Center subsidiary with MD, DC, VA, WV, and PA footprint
- Operating 2 business accelerator programs annually within our coworking center
- Advising development across Baltimore

Harbor Bankshares Community Development Entity (CDE)

- Founded in 2001
- 9x Winner of \$384 Million Total In New Market Tax Credit Allocations
- Manager of 30+ Funds with Flawless Track Record
- Catalyzing 4,000+ Jobs and 3.0Bn in leveraged investment in Low-Income Census Tracts

Harbor Bankshares Capital Corporation

- Founded in 2018
- Private Equity Financial Advisory
- Asset Management
- \$92 Million in leveraged lending originations in Q4'20
- Specialized Small Business Investment Company ("SSBIC") Rights
- Opportunity Zone Advisory Practice awarded by the US MBDA.

THE CDFI ROLE

The Corporation and Bank seeking to enhance financial services and bring more resources to the Baltimore Community applied over 20 years ago to become certified Community Development Financial Institutions (CDFI). Today, the Corporation and two of its subsidiaries are CDFIs. Also, The Corporation's non-profit CDC is a certified CDFI.

Under the Department of Treasury's CDFI Program, the Corporation and its subsidiaries have participated in several of funds programs and have successfully won/earned:

- 13 Bank Enterprise Awards (BEA) totaling \$3,893,753 which helped to increase lending in lower income communities. The BEA Award is important to CDFI Banks because of its leverage capacity. Records show that 90 percent of BEA monies go to the lowest income census tracts.
- Financial Assistance (FA) award totaling \$649,000. (\$500,000 was for loans and \$149,000 persistent poverty).
- Nine rounds of New Market Tax Credit (NMTC) awards totaling \$384 million helping to leverage over \$3 billion of development and create 4,000 jobs. Projects include science buildings, community schools, and healthcare facilities.

Many projects involve multiple level of participation from The Corporation. A project could include New Market Tax Credit (NMTC), Harbor Bank loan and advisory services.

MARYLAND PROFILE

- The programs of the CDFI Fund are very important to the state of Maryland. Maryland is home to 15 CDFIs, two of which are banks or bank holding companies, while two additional CDFI banks based in the District of Columbia provide significant services within the state.
- In 2020, Maryland-based CDFIs and CDFI banks serving Maryland (Maryland and D.C. based) received \$6.7 million in CDFI Financial Assistance (FA) and Technical Assistance (TA) awards. CDFI banks serving Maryland received \$202,898 in BEA funds.
- In the past 3 years Maryland-based CDFIs and CDFI banks serving Maryland have received \$31.4 million in FA and TA awards, while CDFI banks serving Maryland have received \$1.15 million in BEA funds.
- Since the CDFI Fund's inception in 1996, Maryland-based CDFIs and CDFI banks serving Maryland have received \$119.5 million in total awards. In that same period, CDFI banks serving Maryland have received \$14.5 million in BEA funds.
- Maryland is among the poorest States in the Nation. Like other States with persistent poverty, Maryland has a lot to lose if the CDFI Fund and BEA Program do not have adequate funding.
- Approximately 9.1 percent of all Marylanders live in poverty—with the poverty rate in 8 counties (Somerset, Baltimore, Dorchester, Allegany, Wicomico, Garrett, Kent and Washington) equal to or exceeding the 12.3 percent United States total.
- Baltimore City, Maryland's USDA designated persistent poverty county, has a poverty rate 160 percent higher than the United States total. Somerset County has a poverty rate 190 percent higher than the United States total.

COVID-19 PANDEMIC

The crisis of COVID-19 highlighted the importance of CDFI banks and other community based financial institutions. CDFI banks reached and helped the businesses that required loans to survive, the ones disproportionately operating in low to moderate income communities and desperate for banking services and in particular financial assistance. The government offered stimulus programs—especially the Paycheck Protection Program (PPP) proved to be a lifeline to many of these businesses, especially in the distressed communities.

Harbor Bank stepped to the front of the line providing assistance through the PPP program. Harbor Bank met and assisted over 1,000 potential PPP applicants and processed 674 applications totaling \$67.5 million. Adjusting out the 10 largest borrowers, the average size of Harbor's PPP loan was \$52,000.

The government met the economic call from the community and Harbor Bank was a part of the delivering channel.

In summary, the Treasury's CDFI Program is vital to the growth and restoration of the communities that have been depressed or deprived for years. It is difficult

to provide the capital that these communities need without a CDFI Program. My fear today is that the absence of the PPP Program will render businesses incapable of continuing on the survival path.

I urge the members of the subcommittee to recognize the significant economic benefits of funding the CDFI Fund programs. Not only do these programs provide access to capital in historically disadvantaged regions of the country, but they do so by leveraging private investment. The CDFI Fund programs are a market-based strategy for addressing chronic economic challenges.

I thank Chairman Van Hollen, Ranking Member Hyde-Smith, and the members of the Committee for the opportunity to tell you the story of Bank of Anguilla, the work we do, and the communities that we serve.

[This statement was submitted by Joseph Haskins, Jr., Chairman and Chief Executive Officer]

PREPARED STATEMENT OF LEADERSHIP ENGAGEMENT OF THE NATIONAL CONGRESS OF AMERICAN INDIANS

On behalf of the National Congress of American Indians (NCAI), thank you for this opportunity to provide testimony on FY 2023 funding for the Office of Management and Budget (OMB), Department of the Treasury (Treasury), the Small Business Administration (SBA), and the Federal Communications Commission (FCC). A brief history of Native American policy in the United States contextualizes the need for increased and improved financial services in Indian Country and greater representation in OMB. Specifically, the U.S. legacies of genocide, isolation, forced assimilation, complete termination of Tribal government recognition, revocation of Tribal government jurisdictional authority, and forced conversion of Tribal lands, contribute to the systemic negative socio-economic conditions in Tribal communities, including a lack of access to deposit and credit services in Indian Country. Policies failing to consider that Tribal Nations and their citizens do not have the same capital equity as other American governments and citizens cause Federal programs and initiatives to be less successful than intended. Federal spending policy for programs that benefit Native Americans must be considered holistically across appropriations subcommittee jurisdictions and recognize the unique historical and political position that was forced upon Tribal Nations by the United States.

For example, other governments in this country can raise revenue through tax-exempt debt. The issuance of tax-exempt bonds are a valuable tool to raise capital because they have a longer payback period and lower interest, in general. Tribal Nations do not have parity in access to issuance of tax-exempt bonds because of the “essential government function” test, which requires a Tribal Nation to prove that it is going to use the money for an essential government function. However, the Department of the Treasury (Treasury) has not defined what it means, nor has the Internal Revenue Service (IRS). Tax-exempt debt used to be a market in Indian Country, but without an essential government function definition, banks backed out of those sort of activities. So, when Tribal governments raise capital for economic purposes, the same purposes we are uniquely reliant on to generate revenue, we are not able to use tax-exempt debt. Tribal governments are not able to use it for housing and other activities that, again, have other collateralized asset barriers when they take place on Trust lands. Indian Country needs patient capital. Changing this discriminatory practice around the issuance of tax-exempt debt would free up a lot of capital that other governments take for granted.

Another example can be found in alignment of a banking and credit deserts map with a map of Tribal communities, which reveals a crisis for Tribal citizens and governments attempting to access cost-effective capital and banking services.¹ Unbanked and underbanked areas in the United States are known as “banking deserts.”² According to a 2013 national survey of unbanked and underbanked households by the FDIC, 16.9 percent of American Indian/Alaskan Native households did not have an account at an insured institution (unbanked) and 25.5 percent with an account also had to obtain financial services and products from non-banks,

¹Native American Finance Officers Association (NAFOA), Comments Re: Community Reinvestment Act Modernization, Docket ID: OCC-2018-0008, 2.

²Donald P. Morgan, Maxin L. Pinkovskiy, and Bryan Yang, Banking Deserts, Branch Closings, and Soft Information, March 7, 2016, <https://libertystreeteconomics.newyorkfed.org/2016/03/banking-deserts-branch-closings-and-soft-information.html>.

alternative financial services providers, in the prior 12 months (underbanked).³ The general U.S. population is unbanked at about 7.7 percent and underbanked at about 20 percent.⁴ Access to credit, especially for small businesses, declines as the distance between the bank and borrower increases.⁵

The President's FY 2023 Budget Request to Congress calls for a historic shift in the paradigm of Nation-to-Nation relations that seeks to restore the promises made between our ancestors and the United States in several key programs. It includes requesting mandatory funding for: Indian Health Service, Department of the Interior Contract Support Costs and Section 105(l) Tribal Leases, and water settlements operations and maintenance; along with a myriad of investments in Indian healthcare, education, public safety, natural resource management, and infrastructure. The Biden-Harris request represents the most revolutionary presidential budget and policy proposals for Tribal programs ever, which have long been advocated for by Tribal leaders, are long overdue, and are prepaid for by our ancestors. The President's FY 2023 Budget for Federal agencies within this subcommittee's jurisdiction is largely a continuation of the status quo that results in Native Americans ranking near the bottom of all Americans in terms of health, education, and employment⁶ and the persistence of banking deserts that inhibit economic development, but this subcommittee can make a substantial difference by providing critical funding for programs beyond the norm.

Cross-referencing OMB Native American Crosscut data with Appropriations Committee reports reveals that FY 2022 spending for Native American programs represents approximately 0.43% of total regular appropriations budget authority within this subcommittee's jurisdiction. With Federal investment metrics such as these, it is no surprise that Indian Country is in a State of catastrophe by national standards. Despite this chronic underinvestment, Indian Country is an important economic driver in the U.S. Economy.⁷ Collectively, Tribal Nations comprise the 13 largest employers in the United States, with Tribal businesses employing more than 700,000 employees, providing economic opportunity for both Native and non-Native workers.⁸ Evidence indicates that where Tribal Nations are successful with economic development that poverty rates, arrest rates, and health issue rates are lower, while educational outcomes and real per capita income are higher. Further, revenue generated on Tribal lands results in a spillover effect that supports local workforces and generates tax revenue.⁹ Ultimately, prosperity for Indian Country increases market penetration across sectors and productivity in the American labor market, as well as improves outcomes associated with other Federal spending that maximize value ratios of Federal input to desired output—in simple terms, good governance. As such, an investment in Indian Country is an investment in America for all Americans.

OFFICE OF MANAGEMENT AND BUDGET

The United States has a unique legal relationship with Tribal governments—a Nation-to-Nation relationship that extends to all Federal agencies. On April 26, 2021, OMB released its Tribal Consultation Plan of Actions to: improve executive branch compliance with Executive Order 13175; consider establishment of a Tribal affairs advisor; conduct regular consultations with Tribal Nations and Tribal officials; develop an OMB Consultation Policy; consider providing additional information on Tribal funding; review its policies and procedures; and identify legislation of potential interest to Tribal Nations. Yet, OMB reports zero Federal funding for programs that benefit Native Americans in its FY 2015 through FY 2023 Native American Funding Crosscuts. Dedicated offices to promote and fulfill the Federal Government's trust and treaty obligations are a proven policy mechanism to reduce programmatic inefficiencies and improve outcomes, making government work better with and for Tribal Nations. Congress must provide OMB the resources to establish this ongoing expertise and must break down the historic institutions of discrimina-

³Federal Deposit Insurance Corporation, 2013 Federal Deposit Insurance Corporation National Survey of Unbanked and Underbanked Households, 16, <https://www.fdic.gov/householdsurvey/2013report.pdf>.

⁴Id.

⁵Id.

⁶U.S. Commission on Civil Rights, Broken Promises: Continuing Federal Funding Shortfall for Native Americans, 1, available at: <https://www.usccr.gov/files/pubs/2018/12-20-Broken-Promises.pdf>, accessed on: May 25, 2022.

⁷Patrice H. Kunesh, Getting real about Indian Country—surprising progress in the heartland, <https://indiancountrytoday.com/opinion/getting-real-about-indian-country-surprising-progress-in-the-heartland>, Accessed: April 6, 2022.

⁸Id.

⁹Id.

tory gatekeeping that harm Tribal Nations. It is a matter of fulfilling its trust responsibility. Congress can promote this government-wide efficiency by providing \$2.5 million to OMB for an Office of Tribal Affairs to be bureaucratically located within and report directly to the OMB Director. The crosscutting nature of Tribal spending and policy throughout the Federal Government necessitates that this expertise be within the Office of the OMB Director.

DEPARTMENT OF THE TREASURY

Treasury maintains a long standing and significant role in matters that substantively impact the sovereignty and welfare of Tribal Nations. Treasury invests in economic development and financial services for Indian Country, primarily through funding and technical assistance for Community Development Financial Institutions (CDFIs). However, Treasury has other programs that make decisions affecting Tribal Nations and their citizens, such as the Internal Revenue Service, the Office of the Comptroller of the Currency (OCC), and the Office of Recovery Programs. The Native American Community Development Financial Institutions Fund Assistance Program (the NACA Program) has been successful and effective in infusing desperately needed financial capital into low-income Tribal communities through technical and financial assistance grants; however, the CDFI bond guarantee program, and the New Market Tax Credits program have not had the same success. Native CDFIs provide a wide range of loans to microenterprises, small businesses, consumers, and homeowners; financial education and entrepreneurial development training; small business planning and homebuyer education; and counseling on credit, foreclosure prevention, debt relief, and other ways to improve financial capacity. Due to limited funding, far fewer Native CDFI applications are approved than submitted. Barriers to capital access, aggravated by the COVID pandemic, necessitate greater funding for existing Native CDFIs and awards to more grant applicants to generate more loans, financial literacy, and entrepreneurial development counseling in Indian communities.

Although regular appropriations funding levels for Treasury programs increased in FY 2021 for the first time in more than a decade, the increase has not kept pace with CDFI and Native CDFI growth during that same period, resulting in lost economic opportunities throughout Indian Country. Even with the increase in FY 2021 (which was flat-funded for FY 2022), cross-referencing OMB Native American Cross-cut data with Appropriations Committee reports reveals that FY 2022 spending for Native American programs represents approximately 0.15% of total regular appropriations budget authority provided for Treasury within this subcommittee's jurisdiction. The subcommittee should provide at least \$30 million to the CDFI Fund Program Account for Native CDFIs and \$2.5 million for an Office of Tribal Affairs within the Office of the Secretary of the Treasury. Establishment of a permanent Office of Tribal Affairs within the Office of the Secretary of the Treasury will promote institutional expertise and guidance across Treasury policy and activity. Congress and Treasury should welcome this opportunity to reduce costs and increase efficiencies associated with necessary operations of the agency, while simultaneously maximizing the American taxpayer's investment in this country and growing local, regional, and national economic productivity.

SMALL BUSINESS ADMINISTRATION

SBA focuses on capital access, contracting, and entrepreneurial development. The SBA's Entrepreneurial Development budget includes a small line item for Native American Outreach that funds the Office of Native American Affairs (ONAA) which coordinates all SBA program activities to help Tribal Nations and Native-owned businesses navigate SBA contracting, business assistance and lending programs. In the COVID pandemic's wake, the ONAA needs more outreach funding to engage in multi-agency workshops and Native supplier initiative events, encourage greater use of SBA loan guarantees, assist Native recipients of Paycheck Protection Program loans and disaster loans, and strengthen Native contractors' participation in the SBA's 8(a), HUB Zone, and other small business contracting programs. In order to provide meaningful services, outreach, and education that is national in scope to Tribal Nations and Native-owned businesses, this subcommittee should provide at least \$5 million for the SBA's ONAA.

FEDERAL COMMUNICATIONS COMMISSION

Tribal lands experience lower rates of both fixed and mobile broadband deployment as compared to non-Tribal areas of the United States, particularly in rural

areas.¹⁰ The FCC Office of Native Affairs and Policy (FCC-ONAP) States that, “[u]nderstanding the complexity of the digital divide in Indian Country requires an appreciation of the unique challenges facing Tribal Nations, which include deployment, adoption, affordability, and access to spectrum, as well as lack of investment dollars and access to credit and start-up or gap financing.” Through this Tribal engagement, the FCC has revamped regulations to assist in bridging the digital divide on Tribal lands. However, the FCC-ONAP office was created without dedicated funding, and it was not until passage of the FY 2014 Omnibus that the Office received \$300,000 to support its Tribal consultation and training directives, an amount that is not commensurate with the scope of the mission tasked. This subcommittee should expressly provide \$2.5 million to FCC-ONAP to promote an office with the resources to address barriers that exacerbate the digital divide in Indian Country.

CONCLUSION

Our people have paid for every penny obligated to Indian Country hundreds of times over by providing this nation with our land. In order to uphold this Nation’s promises to its people, it must first uphold its promise to this land’s First People. We expect to continue to be treated as sovereign nations and with governmental parity. When we work together we can achieve so much. We must now continue down that path of Nation-to-Nation growth, and only then will all of our people be able to fully flourish.

[This statement was submitted by Larry Wright, Jr., Director]

PREPARED STATEMENT OF LINCOLN NETWORK

Chairman Van Hollen, Ranking Member Hyde-Smith, and Members of the subcommittee:

We are writing on behalf of Lincoln Network to encourage this subcommittee to provide additional funding to the Federal Trade Commission (FTC) and to direct funds for the hiring of additional staff technologists.

In March, Congress passed the Consolidated Appropriations Act that appropriated \$376.5 million to the FTC for FY 2022.¹ The FTC requested that this subcommittee appropriate \$490 million for FY 2023, an increase of \$139 million.²

The report language from the House Appropriations Committee for FY 2023 recommended fully funding the FTC’s requested budget at \$490 million.³ This report also encourages the Commission to address several concerns related to the technology industry, including deceptive data collection practices, fraud related to cryptocurrencies, online misinformation, and online privacy for children. Addressing these concerns requires deep technical expertise that is currently lacking at the FTC.

In its own appropriations bill, the subcommittee should fully fund the FTC’s FY 2023 budget request and specify that a significant portion of this funding should go toward bolstering technical expertise at the Commission.

BACKGROUND

The FTC, in conjunction with the Department of Justice Antitrust Division, is primarily responsible for enforcing laws related to unfair and deceptive business practices and other anticompetitive activity. Over the past few decades, the Commission has increasingly exercised its authority over the technology industry. The Commission regularly scrutinizes the business practices of tech firms and reviews mergers and acquisitions in the technology sector. As the size and complexity of the tech industry have grown, it is essential that the FTC has sufficient technical expertise to properly evaluate consumer impacts in this sector.

¹⁰ See FCC, Fixed Broadband Deployment Data from FCC Form 477, available at <https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477>; FCC, Mobile Deployment Form 477 Data, available at <https://www.fcc.gov/mobile-deployment-form-477-data>.

¹ Consolidated Appropriations Act, 2022, Public Law 117–103 (2022).

² Federal Trade Commission, Federal Trade Commission Fiscal Year 2023 Congressional Budget Justification (March 2022), p. 8, https://content.mlex.com/Attachments/2022-04-04_X75ZUQW17T5GT2LS/FTC%20-%20FY23%20CJ.pdf.

³ Financial Services and General Government Appropriations Bill, 2023, p. 69–72, (2022), <https://docs.house.gov/meetings/AP/AP00/20220624/114951/HMKP-117-AP00-20220624-SD002.pdf>.

Recently, the FTC has taken dozens of enforcement actions against tech firms, particularly regarding user privacy and data security practices.⁴ The Commission has settled cases against Google, Facebook, Twitter, and several other tech companies recently for privacy violations and for violating previous orders. Perhaps most significantly, the FTC is currently engaged in litigation against Facebook (now Meta), alleging that the company has abused its “monopoly power” to implement “an anticompetitive scheme that prevented differentiated and innovative firms from gaining scale, thus enabling Facebook to maintain its dominance.”⁵ All of these actions require the Commission to have a firm grasp of the technical issues at play in addition to legal and economic factors.

The FTC’s technical expertise, while great, tends to lag behind other global enforcement agencies. For example, the FTC’s Division of Privacy and Identity Protection has 40–45 employees. The United Kingdom’s and Ireland’s enforcement agencies have over 700 and 150 employees, respectively.⁶ While this comparison is imperfect, comparing one Division to entire foreign agencies, this analysis highlights that the FTC’s technical staff deserves to be fully funded.

Increasing technical expertise at the FTC will not necessarily result in more cases being brought against tech firms. The primary value-add for investing in technical expertise at the Commission is to help its lawyers and economists more accurately evaluate potential consumer harms, establish enforcement priorities, and develop technological solutions to operational challenges.

THE NEED FOR TECHNICAL EXPERTISE AT THE FTC

The FTC has long recognized the need for expanded technical capacity, both for enforcement and general operations. In its FY 2023 budget request, the Commission asked Congress to increase its appropriation by \$65.4 million to hire 300 additional full-time equivalent employees. Among other areas, this increase would go to support increasing technology enforcement capacity and developing technological solutions to casework and litigation challenges.⁷ With regard to enforcement, the Commission further explained:

In FY 2020, the Commission established the Bureau of Competition’s Technology Enforcement Division (TED) to reinvigorate and refocus BC’s commitment to identifying and challenging anticompetitive mergers and conduct in complex and increasingly pervasive technology markets. While pursuing this work, FTC staff are severely outmatched by the resources that dominant technology firms can deploy, such that the number of attorneys and experts working for defendants can outmatch FTC by ten to one.⁸

Federal agencies are often outgunned when engaging in enforcement actions against tech firms. Giving the FTC the resources it needs to hire more technical experts for the TED and other tech-focused departments would undoubtedly help it more effectively and efficiently police anticompetitive activity in tech markets.

THE NEED FOR QUALIFIED ECONOMISTS AT THE FTC

The Bureau of Economics is crucial to the Commission’s antitrust and consumer protection missions. It “helps . . . evaluate the economic impact of . . . actions by providing economic analysis for competition and consumer protection investigations and rulemakings.”⁹ The Bureau employs numerous Ph.D. economists, research analysts, accountants, and other staff necessary to support the analysis it provides to the Commission.¹⁰ Throughout the decades, the Bureau’s responsibilities have increased to include analysis supporting antitrust investigations, merger review, and support for other types of investigations and cases.

⁴Federal Trade Commission, FTC Report to Congress on Privacy and Security, (Sept. 13, 2021), p. 2 (focusing on efforts on health apps; accuracy of data for housing, employment, and credit; videoconferencing; and education technology, https://www.ftc.gov/system/files/documents/reports/ftc-report-congress-privacy-security/report_to_congress_on_privacy_and_data_security_2021.pdf).

⁵Federal Trade Commission v. Facebook, Inc., 1:20-cv-03590–JEB (2021).

⁶*Ibid.*, p. 7.

⁷Federal Trade Commission, Federal Trade Commission Fiscal Year 2023 Congressional Budget Justification (March 2022), p. 10, https://content.mlex.com/Attachments/2022-04-04_X75ZUQW17T5GT2LS/FTC%-%FY23%CBJ.pdf.

⁸*Ibid.*

⁹Federal Trade Commission, “Bureau of Economics,” <https://www.ftc.gov/about-ftc/bureaus-offices/bureau-economics>.

¹⁰Michael Salinger and Paul Pautler, “The Bureau of Economics at the US Federal Trade Commission,” Federal Trade Commission, April 2006, <https://www.ftc.gov/sites/default/files/attachments/careers-bureau-economics/06beover.pdf>.

In addition to increased technical staffing levels, the FTC’s budget justification requests that Congress provide funding for 20 full-time employees to “provide increased support and economic analysis . . . and to increase the amount of economic analysis that guides the Commission’s consumer protection and competition policies and enforcement.”¹¹ Within the justification document, the Commission expresses a desire for the prospective full-time employees to be economists focused on antitrust, including “merger and nonmerger enforcement investigations and litigation, and research to help the FTC focus antitrust enforcement to maximize the agency’s ability to maintain competitive markets.”¹²

The Commission’s primary role is protecting consumers, not solely competition. Even the competition model should ask the question of whether the presence or absence of competition harms consumers. The Commission and Bureau should be focused on ensuring that government practices do not harm consumers by restricting entry, limiting competition, chilling innovation, or restricting choices.¹³

Given the Bureau’s nature supporting the Commission’s work, the core request seems appropriate. However, this subcommittee should focus on the Bureau and Commission’s broader work. While additional staff should help the Commission’s antitrust efforts, this subcommittee should make it clear that any new staff should be used to support the Bureau’s broader mission of protecting consumers.

RECOMMENDATIONS

This subcommittee should fully fund the FTC’s FY 2023 Budget Request.

As we have argued previously, complex technical challenges and increased workloads at the FTC necessitate additional resources.¹⁴ Just as their House counterparts did, this subcommittee should fully fund the FTC’s FY 2023 budget request of \$490 million. While funding alone is insufficient, granting the Commission the resources to expand its technical capacity would result in more effective supervision of tech markets and more efficient operations at the FTC.

This subcommittee should include language in the FY 2023 appropriations bill that directs funds toward hiring additional technical staff.

The need for additional technical capacity at the FTC is clear and immediate, and it is incumbent upon appropriators to ensure that the Commission has the resources it needs to address this challenge. Specifically, this subcommittee should direct the necessary funds of the \$65.4 million requested for additional, full-time employees toward hiring individuals with technical or economics expertise. These new roles could help close capacity gaps within the Technology Enforcement Division, Division of Privacy and Identity Protection, Office of Technology Research and Investigation, Bureau of Economics, regional offices, and other relevant parts of the FTC. In all cases, this subcommittee should also ensure that the Commission remains committed to its original and statutory purposes of protecting consumers, with a focus both on government practices and private sector practices that harm consumers.

[This statement was submitted by Jonathon Hauenschild, M.A., J.D., Policy Counsel and Luke Hogg, Policy Manager]

PREPARED STATEMENT OF THE NATIONAL ASSOCIATION OF DRUG COURT PROFESSIONALS

Chairman Van Hollen, Ranking Member Hyde-Smith, and distinguished members of the subcommittee, I am Meg Kaiser, prevention associate with the Harford County Office of Drug Control Policy in Maryland. I am honored to have the opportunity to submit my testimony on behalf of 40,000 treatment court professionals working in adult drug courts, family treatment courts, juvenile drug treatment courts, Tribal healing to wellness courts, impaired-driving courts, and veterans treatment courts. I am requesting Congress provide level funding of \$3 million to the authorized Drug Court Training and Technical Assistance Program (Public Law 115–271) at the Office of National Drug Control Policy for fiscal year 2023.

Across the country and in my home state of Maryland, treatment courts are on the front lines of saving lives, reuniting families, cutting crime, and saving money. They unite public health and public safety to transform the justice system’s re-

¹¹ See 2023 Budget Justification, p. 9–10.

¹² *Ibid.*, p. 13.

¹³ Paul A. Pautler, “A History of the FTC’s Bureau of Economics,” September 8, 2015, p. 82, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2657330.

¹⁴ “Providing Resources for the Federal Trade Commission to Promote Healthy Digital Markets and U.S. Leadership in Technology Governance” (2021), <https://lincolnpolicy.org/wp-content/uploads/2021/02/FTC-approps-letter-final.pdf>.

sponse to substance use and mental health disorders by offering an evidence-based alternative to incarceration that combines individualized, evidence-based treatment with accountability. Continued education and training for the multidisciplinary court team (which includes the judge, treatment providers, defense, prosecution, law enforcement, community supervision, and others) is vital to ensuring fidelity to the successful treatment court model. In fact, research shows treatment courts whose teams participate in training see a 55% reduction in recidivism among program graduates.

I know firsthand the importance of training and technical assistance (TTA) for treatment courts. Prior to becoming a prevention associate, I served as drug court case manager. In my current role, I work closely with the Harford County Drug Court and see how training and technical assistance (TTA) at the local and national level pays off in ensuring fidelity to the treatment court model. Our participants come from different backgrounds and face unique barriers to recovery when they enter the program. From incentives and sanctions to medication for addiction treatment and so many other relevant topics, training is fundamental to enabling the court team to effectively serve the unique needs of program participants.

I not only attest to the importance of TTA in my professional capacity but also in my personal capacity. In 2018, I graduated from the Harford County Drug Court. I had casually and sporadically used substances in college but spiraled into heavy substance use in 2012 after I was sexually assaulted. I became dependent on opiates as I self-medicated my trauma, and my life unraveled. I was dismissed from the University of Maryland right before my senior year, and I began stealing to support my addiction. For a long time, I managed to conceal the trauma of my sexual assault and my substance use disorder from my family, but eventually I could not hide my struggle. While in treatment, I resumed use after receiving news that a dear friend had overdosed. I don't like to think about where my downward trajectory could have landed me. Had my parents not turned me in, and the drug court program not accepted me, I'm confident I wouldn't be here today.

I'm grateful every day for the redirection my life took once I got into drug court. The treatment, supervision, coaching, and recovery support from the multidisciplinary treatment court team helped turn my life around. The court team was highly functional and well trained. They worked together seamlessly to respond to every bump in the road and ensure I had the tools I needed to find and sustain recovery. The treatment providers developed an individualized treatment plan for me that included medication for opioid use disorder to help stabilize me in early recovery. More than 3 years after graduating, I'm in long-term recovery without medication, and I'm once again a proud daughter, sister, friend, taxpayer, and employee. I have dedicated my career to helping people turn their lives around and stay in recovery.

Now more than ever, TTA are needed to educate treatment courts on critical issues such as medication for addiction treatment, overdose prevention, and equity and inclusion. Understanding and implementing best practices improves service delivery and outcomes and helps treatment courts address the most pressing issues facing our justice system.

I am one of 1.5 million people who have found long-term recovery through treatment courts. Supporting TTA for treatment courts is critical to ensuring these programs continue providing quality, evidence-based care to participants struggling with mental health and substance use disorders. I encourage this committee to provide level funding of \$3 million for the Drug Court Training and Technical Assistance Program at the Office of National Drug Control Policy.

[This statement was submitted by Margaret "Meg" Kaiser, Prevention Associate, Harford County Office of Drug Control Policy, Maryland]

PREPARED STATEMENT OF THE NATIONAL COALITION FOR HISTORY

The National Coalition for History (NCH) supports the Biden administration's recommended funding level of \$426.5 million for the National Archives and Records Administration's (NARA) Operating Expenses (OE) budget in fiscal year (FY) 2023, which is an increase of \$38.2 million from the FY 22 level of \$388.3 million.

NCH also supports the Administration's base funding level of \$9.5 million in FY 23 for the National Historical Publications and Records Commission (NHPRC) grants program. That represents an increase of \$2.5 million over the FY 22 base level of \$7 million. The NHPRC received a total of \$12.3 million in funding in FY 22. However, \$5.3 million of that was the result of congressionally directed funding which we expect will fluctuate from year to year.

The National Coalition for History (NCH) is a consortium of 43 organizations that advocates and educates on Federal legislative and regulatory issues affecting histo-

rians, archivists, political scientists, documentary editors, teachers, students, genealogists, and other stakeholders. As researchers, teachers, and conservators of American history and culture, we care deeply about the programs and activities of NARA and the NHPRC.

NARA has reached an inflection point. Recently, David S. Ferriero retired after 12 years as Archivist of the United States (AOTUS). We want to recognize and thank him for his leadership, dedication, and integrity during what have been challenging times for NARA.

The new Archivist will face tremendous challenges in both the short and long term. For far too long, NARA has been neglected and underfunded. NARA has made progress but continues to struggle with the transition from paper to electronic records. As the quantity of material increases exponentially, NARA will have difficulty keeping up with Federal records generated each year, let alone tackling the massive backlog of older, historically important paper records that should be digitized. Perhaps most importantly, the quality and quantity of services provided to our citizens will further deteriorate if not addressed in this budget cycle. There are indications that NARA may be unable to manage these important responsibilities, a trend that has only been exacerbated by the pandemic, the ensuing shutdown and delayed restoration of on-site services. This limitation owes less to management issues than to inadequate funding.

NARA's operating expenses (OE) budget has remained stagnant for more than a decade at a time when the transition to use of electronic records by Federal agencies is well underway. Investment in human capital, including professional archivists, is vital for providing an elevated level of service to the public. For too long Congress and the administrations of both parties have, unfortunately, viewed NARA as a mere housekeeping agency, rather than as a vital agency that ensures transparency, efficiency, and historical documentation for the Nation.

NARA's FY 22 operating expenses budget is \$388 million, which is only \$3 million more than the FY 18 level of \$385 million. NARA requires a level of appropriations commensurate with its vastly expanded responsibilities. This chart provides a summary of the NARA OE and NHPRC budgets over the past decade.

NARA and NHPRC Appropriations, FY 2012 to Present (in millions of dollars)

	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY18	FY 19	FY 20	FY 21	FY 22
NARA	\$373	\$353	\$370	\$365	\$372	\$381	\$385	\$373	\$359	\$377	\$388
NHPRC	\$5	\$4.75	\$4.5	\$5	\$5	\$5	\$6	\$6	\$6.5	\$6.5	\$12.3

In inflation-adjusted dollars, NARA's OE budget has declined for more than a decade.—No Federal agency can absorb such significant reduction in funding without concomitant decreases in public services. Even before the pandemic, NARA had to reduce hours at its research rooms.

We fully understand, and agree, that NARA must prioritize the safety of its staff, researchers, and visitors and we realize they are doing the best they can under unusual and trying circumstances. Currently, customers must make appointments in advance to visit NARA's research rooms and the wait time varies from location to location. In a vast number of cases, researchers working on a project cannot complete their work in a single visit, thus increasing the time required to conduct research.

Researchers may be coming from some distance to use the records at, for example, a presidential library, and being unable to conduct research on consecutive days is not merely an inconvenience. It may make it impossible to do the research at all. To its credit, NARA has tried to enhance the customer experience by allowing the

researcher to request the records to be pulled in advance. However, the current system simply cannot be allowed to continue indefinitely.

We appreciate the additional funds you provided to address the backlog of over 500,000 requests for veteran's records at the National Personnel Records Center (NPRC). However, these are not the only category of NARA's holdings that are experiencing delays. There are tremendous backlogs in responding to Freedom of Information Act (FOIA) requests. In addition, NARA is also facing backlogs in the declassification of records hampering the ability of historians and others to perform research. Delays in the processing of records and responses to records requests at presidential libraries have also increased.

In recent years Congress and the executive branch have placed additional responsibilities on the agency without providing the funding necessary to assume these functions. These include transitioning from the preservation and storage of paper records to the preservation and storage of electronic records. NARA also faces the continued addition of presidential libraries. Each new presidential library created and placed under NARA's care adds additional costs for staff, maintenance, and records management.

The Federal Government's transition to electronic records, including email, has exponentially increased the number of records that NARA must process and catalog. In 2019, NARA and the Office of Management and Budget (OMB) announced that the agency will no longer accept paper records from Federal agencies as of December 31, 2022. We are concerned that with diminished resources and the impact the pandemic had on its ability to perform even its most basic functions, NARA will not be prepared to continue this transition without serious disruptions. We doubt that this deadline can be met without additional resources, both human and technological.

Despite the additional appropriations you provided for this purpose in the FY 22 budget, NARA lacks the funding needed to meet the imperative for digitization and accessibility. This need was made even more obvious during the pandemic which showed the public's expectation that the Federal Government's records can be easily found on the internet. In addition, the need to manage large volumes of textual records is not diminishing. Proactively funding NARA's records management programs ensures that agencies operate more efficiently and that permanent records are preserved. We urge you to provide NARA the additional funding necessary to ensure a seamless transition to all digital recordkeeping in the coming years.

While not an issue that can be addressed in the appropriations process, we urge you to press the authorizers on the House Committee on Oversight and Reform to pass legislation strengthening and clarifying the Presidential Records Act (PRA). Events of the past few years have shown how woefully inadequate the statute has proven in ensuring that the complete historical record of an administration is preserved. Increased accountability and oversight are necessary.

NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION (NHPRC)

The National Historical Publications and Records Commission (NHPRC) is the grant-making arm of NARA. It enables the National Archives to activate resources that connect the American people with archival and historical materials of deep significance to the present. Archive-specific work includes the preservation and access of electronic records and disaster preparedness for vulnerable collections. Historical grants provide for the creation of documentary collections (websites, podcasts, books, databases, transcripts, and audio resources) of nationally significant groups and individuals. Some examples include the documentary histories of people like George Washington, Willa Cather, Thomas Edison, Frederick Douglass, Walt Whitman, Albert Einstein, Martin Luther King, Jr., and Eleanor Roosevelt. NHPRC grants also fund the curation of content pertaining to noteworthy institutions like the early Supreme Court, the First Federal Congress, and the Freedmen's Bureau. In addition, the NHPRC has funded an ongoing project to make the papers of the Founding Fathers available for free online.

NCH supports the Administration's minimum base funding level of \$9.5 million in FY 23 for the NHPRC. That represents an increase of \$2.5 million over FY 22 base level of \$7 million. The NHPRC received a total of \$12.3 million in funding in FY 22. However, \$5.3 million of that was congressionally directed pass-thru funding, an amount which we expect will fluctuate from year to year. \$9.5 million would enable continued support of ongoing programs and modest investment in new ones.

Thank you for the opportunity to present our views on the FY 23 budgets of NARA and the NHPRC.

[This statement was submitted by Lee White, Executive Director]

PREPARED STATEMENT OF NATIONAL SECURITY COUNSELORS

Chairman Van Hollen, Ranking Member Hyde-Smith, and members of the Financial Services and General Government Appropriations subcommittee, thank you for the opportunity to provide this testimony.

This testimony will discuss an area where I believe that Congressional action is needed to address a subtle issue which nonetheless has significant deleterious effects for transparency and accountability, namely, agencies' expansive use of secret filings in Freedom of Information Act ("FOIA") cases and the resulting inability of journalists, academics, and members of the public to access these court filings years or even decades later.¹

FOIA cases are somewhat unique in civil litigation, due to the fact that the agency being sued must demonstrate through admissible evidence that information must be withheld from disclosure without disclosing the information in question. Agencies generally do so by submitting sworn declarations from FOIA officers which "must prove that each document that falls within the class requested either has been produced, is unidentifiable, or is wholly exempt from the act's inspection requirements."² These declarations "must be 'relatively detailed' and nonconclusory,"³ but "would not have to contain factual descriptions that if made public would compromise the secret nature of the information."⁴ In some cases, an agency will assert that it cannot meet its burden on the public record, and in such cases it generally attempts to file a declaration in camera and ex parte so that only the judge and not the plaintiff or their attorney—sees it. This mechanism is an imperfect compromise at best, but it is increasingly overused and abused by agencies with the passive acquiescence of judges, who cite the presumption of good faith that they must afford to agency declarations and virtually never refuse to accept such filings.

It is not unheard of for a judge to grant summary judgment to an agency solely on the basis of an in camera declaration, in which the agency kept from public view not only the facts which would support its case but even the legal arguments. In such cases, the actual legal brief for the agency's motion includes little more than boilerplate language about the burden of proof and the proper conduct of FOIA litigation, and then refers the judge to the in camera declaration for all the relevant analysis. For instance, one of the FOIA cases involving the memos written by former Federal Bureau of Investigation ("FBI") Director James Comey about his meetings with former President Trump was decided solely on the basis of in camera testimony, where even the arguments were kept secret from the plaintiffs (although the judge in that case did agree to review the memos themselves in camera, which is very much the exception to the general practice).⁵ In another such case, the judge found not only that the declaration filed in camera by the FBI was proper, but that the plaintiff did not even deserve a chance to file an opposition brief because "the evidence presented in camera was so conclusive as to the questions presented that further briefing and argument was clearly unnecessary."⁶ Bizarrely, that same judge had the following to say about this purportedly incontrovertible proof:

Nonetheless, the court must state that Hardy's unredacted declaration is the quintessence of bureaucratic obfuscation. While attempting to decipher its meaning, I recalled one of Orwell's observations when confronted with such writing:

As soon as certain topics are raised, the concrete melts into the abstract and no one seems able to think of turns of speech that are not hackneyed: prose consists less and less of words chosen for the sake of their meaning, and more and more of phrases tacked together like the sections of a prefabricated henhouse.

George Orwell, "Politics and the English Language," in *A Collection of Essays* 162, 165 (Anchor Books 1954). Which begs the question, why did the government resort to hackwork here? Orwell again:

The inflated style is itself a kind of euphemism. A mass of Latin words falls upon the facts like soft snow, blurring the outlines and covering up all the details. The great enemy of clear language is insincerity. When there is a gap between one's real and one's declared aims, [the writer] turns, as it

¹ NSC's Deputy Executive Director Bradley Moss provided oral testimony elaborating on this topic as part of the 30 April 2021 Demand Progress Webinar on fiscal Year 2022 Appropriations Public Witness Testimony, at <https://www.youtube.com/watch?v=qsUc5nLcZDk> (testimony begins at 43:56).

² Nat'l Cable Television Ass'n. v. FCC, 479 F.2d 183, 186 (D.C. Cir. 1973).

³ Golan v. CIA, 607 F.2d 339, 350 (D.C. Cir. 1978).

⁴ Vaughn v. Rosen, 484 F.2d 820, 826–27 (D.C. Cir. 1973).

⁵ CNN, Inc. v. FBI, 293 F. Supp. 3d 59, 66–67 (D.D.C. 2018).

⁶ Truthout v. DOJ, 20 F. Supp. 3d 760, 770 (E.D. Cal. 2014).

were, instinctively to long words and exhausted idioms, like a cuttlefish squirting out ink.⁷

My research has determined that the number of such filings has shown a slow increase over time, from approximately 15 instances in 1994 to the high-water mark of approximately 56 in 2017.⁸ I was only able to identify three instances of a judge denying an agency's request to file an in camera declaration since 1993. My personal litigation experience has suggested an increase in the expansiveness of agencies' claims that information must remain secret. In the past, I have occasionally received redacted versions of such declarations through FOIA or similar means, despite the fact that the agency insisted they could not possibly be filed on the public record without serious consequences.⁹ Some of the newly released information has been mundane, and some has been of significant historical importance. For example, in the landmark FOIA case *Weberman v. NSA*, the National Security Agency ("NSA") argued that it could neither confirm nor deny the existence of records about a telegram that Jack Ruby was alleged to have sent to Havana the year before the assassination of President Kennedy.¹⁰ The district court and the 2nd Circuit granted summary judgment to NSA on the basis of an in camera classified declaration, and it was not publicly revealed whether NSA had intercepted such a telegram. However, in 2011, I obtained a redacted version of the classified declaration from NSA, which revealed for the first time that NSA had not intercepted the alleged telegram because it had lacked the technical capacity at the time.¹¹ This was historically important information which would never have seen the light of day but for my efforts, but the public's access to such information should not depend on people like me pursuing it.

It is for these reasons that I bring this issue to the subcommittee's attention. It is arguably beyond the jurisdiction of this subcommittee, or even of the Appropriations Committee as a whole, to make a significant change to the way in which in camera declarations are handled in FOIA cases, but such an effort should not be undertaken without hard data. It will be important for legislators to understand how prevalent this practice truly is and under what circumstances these filings are made by agencies and accepted by courts. To this end, I ask that the subcommittee appropriate sufficient funds from within the Administrative Office for U.S. Courts account (Salaries and Expenses) directing to that office to conduct a comprehensive survey of all in camera agency declarations filed in FOIA cases within the past 10 years (or another reasonable time period), specifically for the purpose of: (1) identifying with certainty the number of such filings; (2) identifying any geographic or temporal trends; (3) specifying whether the agency sought leave for the filings or simply filed them without asking; (4) indicating the depth of the court's discussion of the appropriateness of the in camera filings; (5) indicating the nature of the claims being supported by the in camera filings; and (6) providing any other relevant data.

I also ask the subcommittee to appropriate sufficient funds to the Administrative Office to perform a feasibility study for a process in which all agency declarations filed in camera in FOIA cases would automatically be filed on the public record after 5 years (or another reasonable time period). This study would allow Congress to intelligently decide whether it would be appropriate to legislate such a proposal, so that these important court records would ultimately become accessible to journalists, academics, and the general public without relying on individual persons to pursue their release as I did. If any type of sealed court filings should be presumptively open after a period of time, it would most assuredly be filings made in litigation over government transparency.

[This statement was submitted by Kel McClanahan, Executive Director]

⁷Id. at 768–69.

⁸This research was performed by searching court dockets from 1993–2018 for the term “in camera” and then parsing out the appropriate entries. These dockets were provided by the Transactional Records Access Clearinghouse's FOIA Project. The degree to which these dockets accurately reflect court filings during this time period cannot be ascertained at this time, and so these figures may not represent the totality of the practice. Detailed information about this analysis and my bases for making any other claim in this testimony is available upon request.

⁹However, as of the last few years, agencies have resisted releasing such in camera declarations through FOIA or Mandatory Declassification Review (“MDR”), taking the position that because they were sealed by a court the agency is powerless to release them. The result of this shift in many cases is that courts will not unseal them because they remain classified, while agencies will not declassify them because they remain sealed, making it literally impossible for them to be made publicly available except when the agency voluntarily decides to release them.

¹⁰668 F.2d 676, 677 (2d Cir. 1982).

¹¹I obtained this record by filing an MDR request with the NSA pursuant to Executive Order 13,526. MDR is a different mechanism than FOIA which is limited to classified documents.

PREPARED STATEMENT OF NEVER AGAIN COALITION

Dear Chair Van Hollen and Ranking Member Hyde-Smith:

We are writing to urge you to support increased funding for the Financial Crimes Enforcement Network (FinCEN) in FY2023 FSGG Appropriations. Today, the House Appropriations FSGG subcommittee has approved \$210.33 million in FinCEN funding in their FY2023 bill¹.

The Never Again Coalition is an organization dedicated to the prevention and cessation of genocide and mass atrocities everywhere by focusing on five core areas: Sudan, South Sudan, Democratic Republic of Congo, Burma and Bangladesh. We seek to empower those affected by mass violence through community-led initiatives, awareness building, partnerships, and advocacy. The United States government is our most powerful ally in these goals and that is why we are urging increased funding for FinCEN, to allow them to enact and enforce effective laws that will disrupt the cycle of corruption that enable genocide and mass atrocities to occur.

Effective laws, and their enforcement, are part of the infrastructure that is necessary for a healthy society. Without them the financial system loses integrity, threatening common goals of the United States and its allies: basic human rights, democracy, sustainable development, and peace. Congress recognized this and passed the Corporate Transparency Act in December 2020, in a bipartisan vote. Thus directed, Congress must now provide the tools to FinCEN to make this act reality. The absence of integrity in our financial system has been made stark by the war in Ukraine. When they were most in need, the tools were not sufficient. We can do better, and we must.

It isn't just Russian oligarchs and corrupt government officials that we must safeguard our financial system from. It is the duty of the U.S., as the leading economy in the world, to prevent bad actors, wherever they are, from using and manipulating U.S. laws and financial infrastructure for illegal activities. The \$210.3 million dollars FinCEN is requesting, and the House FSGG subcommittee approved, to implement and enforce the CTA, is nearly imperceptible in the scheme of costs associated with corruption. In Africa alone, "Every year, an estimated \$88.6 billion, equivalent to 3.7% of Africa's GDP, leaves the continent as illicit capital flight, according to UNCTAD's Economic Development in Africa Report 2020, almost double the amount it receives through international development assistance."²

This begs the question—is it more effective to systemically fight corruption with laws and enforcement, or deal with the resulting famine and mass displacement that stems from corruption and kleptocracy?

The U.S. is wasting resources through development aid if corruption isn't stopped and missing opportunities for affected communities around the globe to live fulfilling and productive lives when they are not reaping any of the benefits from development aid and investment. For the U.S. to fulfill its vision of basic human rights for all, there must be a commitment to invest in the tools needed to stop illicit financial flows. According to a recent report from Transparency International, "Up to the Task"³, the U.S. financial system generates thousands of suspicious activity reports (SAR) each year, but we staff our enforcement team to only investigate a small fraction of these: 10,000 SARs for each staff person, per year. In Germany and France the equivalent ratio is 600:1. Without robust and sustained resources, ours is a system bound to fail.

The U.S. can lead on anti-corruption, and the world needs this leadership. FinCEN is the correct agency to work with the financial system, law enforcement, domestic and international governments to effectively implement and enforce these critical laws. We urge you to support increased funding for FinCEN, in line with FinCEN's request and the House FSGG approved \$210.33 million, in your FY2023 budget.

Thank you,
Kelly McDermott
Financial Accountability Analyst
Never Again Coalition

¹ <https://docs.house.gov/meetings/AP/AP23/20220616/114911/BILLS-117-SC-AP-FY2023-FSservices.pdf>.

² All-Party Parliamentary Groups (APPG) on Anti-Corruption & Responsible Tax and the APPG on Fair Business Banking, "Economic Crime Manifesto", <https://www.appgbanking.org.uk/wp-content/uploads/2022/05/Economic-Crime-Manifesto-1.pdf>.

³ Vincent Freigang and Maira Martini, "Up to the Task?", Transparency International, <https://images.transparencycdn.org/images/2022-Report-Up-to-the-task.pdf>, May 13, 2022.

PREPARED STATEMENT OF THE SENTRY

On behalf of The Sentry, we urge the subcommittee on Financial Services and General Government to approve increased appropriations for the Financial Crimes Enforcement Network (FinCEN) to \$210.3 million, in alignment with the President's fiscal year 2023 budget request.

FINCEN'S CRITICAL ROLE

The Sentry is an investigative and policy organization that seeks to disable multinational predatory networks that benefit from violent conflict, repression, and kleptocracy. Launched in 2016, The Sentry produces hard-hitting investigative reports and dossiers on individuals and entities connected to grand corruption and violence. We advocate for the use of tools of financial and legal pressure, including anti-money laundering and illicit finance measures, targeted network sanctions, criminal prosecutions, compliance actions by banks and other private companies, and asset recovery. As a result of our work, money laundering routes have been exposed and shut down, assets have been frozen, travel has been banned, and corrupt networks have been cut off from the international financial system.

One of the principal agencies The Sentry collaborates with to achieve these objectives is FinCEN. Since The Sentry's launch, we have worked closely with FinCEN leadership and staff to take action against the money laundering that underlies violent kleptocracies, particularly in East and Central Africa. In 2017 and 2018, FinCEN issued important Advisories on illicit finance in South Sudan and on the connection between serious human rights abuse and corruption, which helped to elevate the risk profile of these concerns for the banking community. More recently, FinCEN released an Advisory focused on the risks from kleptocracies, highlighting Russia in particular.

FinCEN plays a crucial role in protecting the U.S. economy from the threat of money laundering and illicit finance, from both domestic and foreign sources. From the current threats posed by the Russian government and network of oligarchs (some of whose wealth comes via exploitation of natural resources in sub-Saharan Africa) and their gatekeepers to regimes such as Iran and Venezuela to more general concerns such as money laundering through real estate and cryptocurrency, FinCEN's mandate and scope is uniquely local and international at the same time, given that the U.S. financial system is itself at once both local and international.

In the years ahead, FinCEN's role will only grow more important to the ability of U.S. regulatory and law enforcement to catch up with and even get ahead of the array of risks the financial system faces. FinCEN plays a central role in implementing the U.S. Strategy on Countering Corruption, as well as several critical new proposed rules and initiatives, and in tracking new and emerging threats, including the impact of the ongoing crisis in Russia and Ukraine.

STRONG CTA IMPLEMENTATION

At the top of the list of FinCEN's priorities is implementation of the bi-partisan Anti-Money Laundering Act and the Corporate Transparency Act (CTA)—landmark pieces of legislation. If robustly implemented, the provisions of both laws will be cornerstones in FinCEN's ability to address current and emerging risks.

The CTA in particular needs swift and strong attention. In February, The Sentry was pleased to lead a coalition of 23 human rights organizations from around the globe in urging implementation of the initial proposed rule focused on the CTA's required establishment of a corporate registry of beneficial owners. This registry will help bring transparency and accountability to human rights abusers who have been benefiting financially from their malign activities, and it will begin to address the problem of anonymous corporate ownership that has been widely reported, including in the blockbuster "Pandora Papers" series that firmly pointed the finger at U.S. financial secrecy.

FinCEN is unfortunately behind in its rulemaking and implementation efforts. FinCEN must be given the resources it needs so that it is able to satisfy congressionally mandated timelines. Given that implementation of the CTA is also a priority related to the Summit for Democracy and that the United States will serve as host to the next International Anti-Corruption Conference, FinCEN's delivery of final products for these events in December would prove U.S. commitment and provide encouragement to other countries.

ADDRESSING MONEY LAUNDERING IN REAL ESTATE

A recent study by Global Financial Integrity found that at least \$2.3 billion has been laundered through the U.S. real estate market in the past 5 years. In Novem-

ber 2021 as part of a massive reporting project connected to a leak of banking documents, The Sentry reported on money laundering scandals involving Congolese officials moving illicitly obtained funds into the U.S. real estate market, including in Rockville, MD—Congress’ backyard—and receiving tens of millions of dollars in bribery payments related to massive mining and infrastructure deals from Chinese companies and middlemen. These are just two of the myriad money laundering schemes routing through the U.S. financial system from networks like those of former Congolese President Joseph Kabila. Such schemes threaten not only the potential for peace and good governance in foreign countries, but also the integrity and soundness of the U.S. economy.

Though the Treasury Department and national security officials identified the US real estate market as a money laundering vulnerability more than 20 years ago, real estate professionals have had a “temporary exemption” from having to fulfill anti-money laundering obligations similar to those required of other financial institutions, thereby offering a gateway to the U.S. financial system. In December, FinCEN initiated a rulemaking to update U.S. anti-money laundering safeguards for the U.S. real estate sector.

FinCEN must have the necessary resources to deliver a timely proposed rule instituting safeguards for the U.S. real estate sector, as another demonstration of U.S. commitment to combat corruption and illicit finance.

CONCLUSION

To implement the CTA, tackle money laundering in real estate, track Russian oligarchs’ assets and target their enablers, as well as continue to deliver on the agency’s baseline priorities, FinCEN requires high-level and trained professionals to keep up with both the financial institutions the agency partners with and the criminal networks they seek to disrupt and penalize. As the “FinCEN Files” showed in 2020, in many potential money laundering investigations, banks are fulfilling their end of the bargain by submitting the Suspicious Activity Reports required of them; the issue is that FinCEN lacks the staff and resources to follow up on these leads.

FinCEN serves a crucial function to uphold U.S. national security and, by extension, to protect human rights. This has been made ever clearer by Russia’s invasion of Ukraine. The Sentry encourages the Senate Appropriations Committee to approve the full \$210.3 million for FinCEN.

PREPARED STATEMENT OF TRANSPARENCY INTERNATIONAL

Dear Chairman Leahy and Vice Chairman Shelby:

On behalf of Transparency International U.S., we write to urge you to support increased funding in the amount of \$210.3 million for the Financial Crimes Enforcement Network (“FinCEN”) in the FY2023 appropriations process. This is the amount that FinCEN has requested¹ in order to effectively fulfill its mission.

Transparency International U.S. is a U.S.-based nonprofit organization that is part of the largest global network of organizations dedicated to combating corruption. One of our top priorities is stemming the flow of corrupt and other criminal funds into and through the U.S. financial system.

Corruption causes serious and widespread harm. The wealth drain from victimized countries robs people of access to healthcare² and basic public services. It drives away private investment and economic development opportunities³ that are necessary for sustainable economies. It props up authoritarian regimes⁴ that engage in human rights abuses and undermine democratic values, institutions, and prac-

¹The Office of Management and Budget, “Budget of the U.S. Government Fiscal Year 2023,” the White House, March 2022, available at https://www.whitehouse.gov/wp-content/uploads/2022/03/budget_fy2023.pdf.

²Karen Hussmann, “Health Sector Corruption,” U4 Anti-Corruption Resource Center, June 2020, available at <https://www.u4.no/publications/health-sector-corruption.pdf>.

³Shamim Adam, Laurence Arnold and Yudith Ho, “How Malaysia’s 1MDB Scandal Shook the Financial World,” The Washington Post, July 28, 2020 available at https://www.washingtonpost.com/business/energy/how-malaysias-1mdb-scandal-shook-the-financial-world/2020/07/28/dade64d6-d094-11ea-826b-cc394d824e35_story.html.

⁴Natasha Hall, Karam Shaar, and Mungeth Othman Agha, “How the Assad Regime Systematically Diverts Tens of Millions in Aid,” Center for Strategic & International Studies, October 20, 2021, available at <https://www.csis.org/analysis/how-assad-regime-systematically-diverts-tens-millions-aid>.

tices. And, as demonstrated in the current crisis in Ukraine, corruption has played a central role⁵ in emboldening Russian leadership to threaten global security.

Our collective understanding of transnational corruption has been enhanced in recent years through a series of blockbuster reports⁶ by teams of investigative journalists and others who've exposed the global architecture of illicit financial flows. We now know that effective enforcement of our anticorruption laws—the ability to “follow the money”—is nearly impossible without a well-resourced financial intelligence unit.

In the U.S. that entity is FinCEN. In a new report, *Up to the Task*, released on May 24, 2022, Transparency International U.S., in collaboration with our global network, wrote that:

Financial intelligence units (FIUs) are one of the most important government agencies tasked with combatting financial crime. Their core function is to receive and analyze suspicious [activity] reports (SARs) and produce financial intelligence for further investigation by law enforcement and other authorities, where relevant. They also support and coordinate the exchange of information with foreign FIU counterparts. In some countries, FIUs have additional responsibilities as they function as the primary regulators and/or anti-money laundering supervisory bodies.

A key finding of the report is that compared to several financial intelligence counterparts that have joined the U.S. to form the Russian Elites, Proxies, and Oligarchs (“REPO”) Task Force, FinCEN resources are woefully insufficient to address the current crisis in Ukraine and to meet the longer-term mission of protecting the U.S. financial system from abuse by corrupt officials and other criminals. As a proxy for the relative size of the covered financial sectors among REPO participating countries, consider the following: Germany and France’s financial intelligence agencies each receive fewer than 600 suspicious activity reports per staff person, per year. In contrast, FinCEN, even with an additional allocation this past year, receives more than 10,000 such reports per staff person, per year.

FinCEN’s ability to work with federal, state, territorial, Tribal, and local law enforcement agencies and to respond to Congress and financial institutions with anti-money laundering obligations is clearly hampered by a lack of resources.⁷ The bureau we ask to safeguard our \$20- plus trillion economy has a staff that is smaller than the staff of the financial intelligence unit of Australia. Additionally, the bureau has outdated equipment and software, and limited funds for licenses to access other data to do proper and necessary analysis—frustrating partners in law enforcement and the private sector.

The invasion of Ukraine and the subsequent search for sanctioned funds is a stark reminder of why a robust financial intelligence bureau is so important. The bipartisan call for an effective response to the crisis has led to an important bipartisan agreement⁸ to increase funding for asset tracing and other improvements to our defenses against financial crime. We urge your continued support for increasing the FinCEN budget to a level at which the bureau can effectively and efficiently manage the data analysis, legally mandated rulemakings, and timely support to public and private sector partners.

Thank you for your consideration of our views. If you have questions, please contact Scott Greytak, Director of Advocacy for Transparency International U.S., at sgreytak@transparency.org.

Sincerely,
Gary Kalman, Executive Director

⁵ Amanda Taub, “To Keep Putin and His Oligarchs Afloat, It Takes a System,” *The New York Times*, May 11, 2022, available at <https://www.nytimes.com/2022/05/11/world/europe/putin-russia-corruption.html>.

⁶ Michael Hudson, et al., “Offshore havens and hidden riches of world leaders and billionaires exposed in unprecedented leak,” the International Consortium of Investigative Journalists, October 3, 2021, available at <https://www.icij.org/investigations/pandora-papers/global-investigation-tax-havens-offshore/>.

⁷ Himamauli Das, “Statement by Himamauli Das Acting Director Financial Crimes Enforcement Network United States Department of the Treasury before the Committee on Financial Services U.S. House of Representatives,” Financial Crimes Enforcement Network, April 28, 2022, available at <https://financialservices.house.gov/uploadedfiles/hhrg-117-ba00-wstate-dash-20220428.pdf>.

⁸ Senator Sheldon Whitehouse and Senator Charles Grassley, “Whitehouse, Grassley Lead Senators in Call to Fully Fund FinCEN’s Anti-Money Laundering Operations,” the office of Senator Sheldon Whitehouse, May 17, 2022, available at <https://www.whitehouse.senate.gov/newsroom/record/whitehouse-grassley-lead-senators-in-call-to-fully-fund-fincens-anti-money-laundering-operations>.

PREPARED STATEMENT OF ZERO EMISSION TRANSPORTATION ASSOCIATION (ZETA)

The Zero Emission Transportation Association is a public interest non-profit of over 50 member companies advocating for 100 percent electric vehicle sales by 2030. Our membership spans the entire electric vehicle (EV) supply chain and includes critical materials, charging companies, utilities, vehicle manufacturers, and battery recyclers.

We request the Senate Appropriations subcommittee on Financial Services and General Government fully fund the General Services Administration (GSA)'s Electric Vehicle Fund, as proposed in the Fiscal Year (FY) 2022 White House budget. Additionally, we request that the Committee include language in its FY 2022 appropriations report that directs GSA to implement policies that will help achieve the President's stated goal to rapidly electrify the Federal fleet.

We offer the following report language suggestions:

- The Committee directs the General Services Administration to rescind delegated authorities for agency vehicle ownership and unify fleet management and acquisition under a single updated, government-wide fleet management and acquisition system.
- The Committee directs the General Services Administration to use a Total Cost of Ownership (TCO) procurement model that accounts for vehicle operating costs, including fuel/charging, maintenance, and public health savings.
- The Committee directs the General Services Administration to work with the U.S. Department of Energy to develop a TCO model which uses statewide variables, regional variables, and inventory variables to estimate the cost of electrifying the Federal fleet and accounts for the social cost of carbon.

[This statement was submitted by Joe Britton, Executive Director]