

**HEARING WITH
TREASURY SECRETARY JANET YELLEN**

HEARING
BEFORE THE
COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES
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United States House Committee on
Ways & Means
CHAIRMAN JASON SMITH

FOR IMMEDIATE RELEASE
April 23, 2024
No. FC-25

CONTACT: 202-225-3625

Chairman Smith Announces Hearing with Treasury Secretary Janet Yellen

House Committee on Ways and Means Chairman Jason Smith (MO-08) announced today that the Committee will hold a hearing on the President's Fiscal Year 2025 Budget Request and Treasury Green Book with Treasury Secretary Yellen. The hearing will take place on **Tuesday, April 30, 2024, at 10:00 AM in 1100 Longworth House Office Building.**

In view of the limited time available to hear the witness, oral testimony at this hearing will be from the invited witness only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record can do so here: WMSubmission@mail.house.gov.

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The Committee seeks to make its facilities accessible to persons with disabilities. If you require accommodations, please call 202-225-3625 or request via email to WMSubmission@mail.house.gov in advance of the event (four business days' notice is requested). Questions regarding accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available on the Committee website at <http://www.waysandmeans.house.gov/>.

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HEARING WITH TREASURY SECRETARY JANET YELLEN

TUESDAY, APRIL 30, 2024

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC.

The committee met, pursuant to call, at 10:05 a.m., in Room 1100, Longworth House Office Building, Hon. Jason T. Smith [chairman of the committee] presiding.

Chairman SMITH. Thank you, Secretary Yellen, for appearing before this committee. I understand that it was 30 years ago this week that you were first nominated to a public sector role as a member of the Federal Reserve Board of Governors. It is a noteworthy record of service. I congratulate you, and I appreciate your willingness to answer our members' questions today. [Applause.]

You have joined the recent chorus of economists who acknowledged that it was a mistake to call inflation "transitory." But it is worth noting the fundamental mistake of President Biden's reckless tax-and-spend policies that have sent the cost of living skyrocketing almost 20 percent since he took office.

Families pay more today for pretty much everything than the day Joe Biden was sworn into office. Real wages are almost four percent lower than when he became President. The Federal Reserve has hiked borrowing rates to try to control inflation. Mortgage payments for the median-priced new home are now nearly \$1,200 higher per month. Prices at the store are up. The cost of a gallon of gas is roughly 50 percent higher today than when President Biden took office. These are the facts. This is the reality that American families are living in President Biden's economy.

Instead of allowing families hit by these high prices to keep more of their hard-earned money, President Biden wants the highest tax increase on families and small businesses in American history. Last week President Biden called for the Trump tax cuts to expire, promising, "If I am reelected, it is going to stay expired."

So President Biden's plan is for the average family of four, making \$75,000, to pay an extra \$1,500 to the IRS each year. President Biden's promise is that the Child Tax Credit will be slashed in half. President Biden's promise is that small businesses will face a 43.4 percent tax rate. This will all happen when the Trump tax cuts all expire under his watch. Basic facts.

President Biden's promise is that family farms will be forced to sell off to big corporations to pay the death tax. In his latest budget President Biden continues breaking his promise to not raise taxes on families making less than \$400,000. Under the President's plan

seniors will see more of their life savings captured by the Federal Government. Small businesses will be taxed on their sweat equity and face tax rates approaching 50 percent. Energy producers will pay more, weakening America's energy independence.

Madam Secretary, your own Department's data shows that millions of Americans earning less than \$400,000 will end up paying a portion of your proposed business tax increases. That is on top of the new audits that will be coming from the IRS, which you conceded in this committee last year. Over 90 percent of those audits will fall on middle-class earners and small businesses.

To add insult to injury, under one-party rule Democrats spent billions of taxpayer dollars on welfare for the wealthy and well connected. They gave the wealthy tax credits for leasing or buying luxury electric vehicles, while working families got higher prices from the so-called Inflation Reduction Act. Under that same law, the Biden Administration is sending billions of taxpayer dollars to Chinese companies tied to their communist government, all in the name of climate change.

China is an adversarial nation, spreading its influence around the world at the expense of American workers and producers. America should be standing up to China's unfair practices, not using tax dollars to make us even more dependent on China. The record of the 2017 Trump tax cuts could not be more different than the policies of this Administration. The Congressional Budget Office found that after the law went into effect the share of taxes paid by the top one percent of households increased, while the burden falling on lower-income earners decreased. Real median household income increased by \$5,000, a bigger gain than the prior eight years combined. The officially reported poverty rate dropped to its lowest level in U.S. history, and Black and Hispanic unemployment reached historic lows. We reversed the decades-long trend of American companies picking up and moving their jobs, factories, and money overseas.

Beyond our borders the Biden Administration has adopted a posture of surrender and retreat. The OECD global tax deal the Administration is trying to negotiate would surrender America's tax revenue and jobs to foreign countries. Congress writes the laws, not bureaucrats negotiating behind closed doors. This deal has no path forward in this Congress.

I hope today we can get some answers on why President Biden insists on tax hikes for working families, while the wealthy and well connected receive cash handouts for their Green New Deal spending.

Thank you for appearing today, and I look forward to your testimony.

I now recognize the Ranking Member Neal for his opening statement.

Mr. NEAL. Thanks, Mr. Chairman.

Madam Secretary, we are honored to have you in our presence today. We also want to highlight what has been a remarkable career: chairman of the Council of Economic Advisers; chairman of the Federal Reserve Board; and a successor to Hamilton as Secretary of the Treasury. We are honored by your presence.

Your team has been hard at work electrifying our nation, ushering in a new era at the IRS, and implementing Joe Biden's record-breaking economic agenda, all with the American people at the center of the work. Even the Wall Street Journal recently noted that our economy is the envy of the world. It is a well-deserved recognition for an administration that has created 15 million jobs, spurred a small business boom, and rebuilt an economy from the bottom up, the middle out, and breaking record after record.

Four years ago, this success was unimaginable, and it certainly was never guaranteed. Millions were without a job at no fault of their own. The grocery shelves were bare, and we had no answers for the mysterious virus taking the country by storm. And then President Joe Biden took office, returning our nation to one of science, sensibility, and, for sure, stability.

Starting with the American Rescue Plan and most recently with the Inflation Reduction Act, which came from this committee, Democrats' legislative successes have helped to transform the nation. We are bringing down healthcare and household energy costs. The clean energy economy has created over 270,000 jobs, and everywhere you travel you can tell that infrastructure projects are underway across the country.

Thanks to our multi-year investment, the Internal Revenue Service has had another outstanding filing season. I am pleased with how, in such a short order, the agency has stood up to secure a way to file tax forms. I know many folks in the Commonwealth were able to use this program to ease their filing experience this year, including a state senator who mentioned it to me yesterday. And after years of underfunding at the hands of our Republican colleagues through their budget cuts, returns are being processed faster, and more Americans are getting the service they deserve. And already, \$500 million in taxes owed from very wealthy people have been recovered.

Looking ahead, the President's budget supercharges this progress and will finish the job for our people. The President's budget ensures that they have the supports necessary to not only fully participate in our workforce, but also to raise families and care for loved ones as we have witnessed wages going up, and the responsibility that we have to hold the well-connected accountable.

Amid all of this success, our colleagues on the other side have had difficulties trying to use their gavels for the work of the American people. The amount of time that has been wasted in this Congress on chaos, conspiracies, impeachments—and we have been fielding questions about this expiration of their tax scam for next year. There are still over eight months left in this Congress and many more until these provisions expire. But it seems as though legislative opportunity is well already being considered by the Congress. I have seen their former leader calling for the devaluation of the dollar, stunting and even, in some cases, repealing much of our legislative progress in the name of politics. It is deeply unpopular, and it puts the health of our economy and countless paychecks on the line.

While we expand what is possible and build the economy of the future, our colleagues plot the next round of trickle-down economics with another round of tax cuts for the wealthy. I didn't ever believe

that advisers to the former President would be suggesting that we manipulate our currency, or we subtract from the independence of the Federal Reserve Board that is now—has a chairman who is a Republican. This is unheard of, that these sorts of—our economy would be jostled with in the coming months.

I have said it before and let me say it once more: The majority is a threat to the health and economic security of our American people. Time to get past the chaos. Time to get past the conspiracies and get on with our work.

We look forward to hearing you as you set the record straight, and pleased that you are joining us again.

Let me yield back the balance of my time.

Chairman SMITH. Thank you, Ranking Member Neal.

Today's sole witness is United States Secretary of the Treasury, Ms. Janet Yellen.

The committee has received your written testimony, and it will be made part of the formal hearing record.

Secretary Yellen, you may begin when you are ready.

**STATEMENT OF JANET L. YELLEN,
UNITED STATES SECRETARY OF THE TREASURY**

Secretary YELLEN. Thank you, Chairman Smith, Ranking Member Neal, and members of the committee. Thank you for the invitation to testify.

The Biden Administration has driven an historic economic recovery over the past three years. GDP growth has been strong, growing three percent over the past four quarters. Inflation has decreased significantly since its peak, though we have more work to do.

The labor market is also remarkably healthy, with the unemployment rate below 4 percent, for the longest stretch in over 50 years. Real wages and household median wealth have increased since before the pandemic, and families are putting their additional income and accumulated savings back into the economy. Consumer sentiment is up 21 percent from 1 year ago. President Biden and I are taking additional actions to bring down the costs of key household expenses like energy, prescription drugs, and housing.

We are also focused on expanding our economy's capacity to create good jobs while reducing the deficit. As we implement the Bipartisan Infrastructure Law, the CHIPS and Science Act, and the Inflation Reduction Act, we are creating economic opportunity for Americans across the country, including those without college degrees and in communities that had historically been overlooked or left behind.

Companies have announced over \$675 billion in clean energy and manufacturing investments since the start of this Administration, some of which I have gotten the opportunity to see firsthand.

The modernization of the Internal Revenue Service, made possible by the IRA and discretionary appropriations, has enabled us to combat tax evasion by the wealthiest Americans that costs our country over \$150 billion a year. And it has made it easier for taxpayers to file their taxes and get the credits they are owed.

We met or exceeded all the goals we set out for this filing season, including reaching an 88 percent level of service, saving taxpayers

over 1.4 million hours of hold time, and providing an additional 11,000 hours of in-person assistance compared to last year.

We also successfully launched the Direct File Pilot Program, an easy, free, and secure way to file taxes on a computer or mobile device with over 140,000 accepted returns in the first year.

The President's budget proposes additional investments to lower costs for workers and families, and strengthen our economy while reducing the deficit, including making permanent the expansion of tax credits for health insurance premiums enacted in the American Rescue Plan and extended in the IRA, and expanding the Earned Income Tax Credit, Child Tax Credit, and Low-Income Housing Tax Credit. These proposals would help make health care more affordable, reduce child poverty, and give working families more breathing room in their household budgets.

We can make these investments while reducing the deficit by \$3 trillion over a decade through a combination of smart savings and tax proposals. President Biden and I have proposed implementing a billionaire minimum tax so that the top 100th of a percent pay their fair share, raising the tax on corporate stock buybacks to encourage businesses to reinvest profits in their workers and grow their companies, and closing estate and gift tax loopholes that allow wealthy Americans to pay less than they would otherwise owe.

As a whole, the President's budget will enable us to address costs that families face right now and to bolster our country's economic strength for the years ahead.

[The statement of Ms. Yellen follows:]

**Hearing with Treasury Secretary Janet Yellen
United States House Committee on Ways & Means
Secretary Janet L. Yellen Testimony
April 30, 2024**

Chairman Smith, Ranking Member Neal, and Members of the Committee: Thank you for the invitation to testify.

The Biden Administration has driven a historic economic recovery over the past three years. GDP growth has been strong, growing 3.0 percent over the past four quarters. Inflation has decreased significantly since its peak, though we have more work to do. The labor market is also remarkably healthy, with the unemployment rate below four percent for the longest stretch in over 50 years. Real wages and household median wealth have increased since before the pandemic, and families are putting their additional income and accumulated savings back into the economy. Consumer sentiment is up 21 percent from one year ago.

President Biden and I are taking additional actions to bring down the costs of key household expenses like energy, prescription drugs, and housing. We're also focused on expanding our economy's capacity to create good jobs, while reducing the deficit. As we implement the Bipartisan Infrastructure Law, the CHIPS and Science Act, and the Inflation Reduction Act, we're creating economic opportunity for Americans across the country, including those without college degrees, and in communities that had historically been overlooked or left behind. Companies have announced over \$675 billion in clean energy and manufacturing investments since the start of this Administration, some of which I've gotten the opportunity to see firsthand.

The modernization of the Internal Revenue Service, made possible by the IRA and discretionary appropriations, has enabled us to combat tax evasion by the wealthiest Americans that costs our country over \$150 billion a year. And it's made it easier for taxpayers to file their taxes and get the credits they're owed. We met or exceeded all the goals we set for this filing season, including reaching an 88 percent level of service, saving taxpayers over 1.4 million hours of hold time, and providing an additional 11,000 hours of in-person assistance compared to last year. We also successfully launched the Direct File Pilot Program, an easy, free, and secure way to file taxes on a computer or a mobile device, with over 140,000 accepted returns in this first year.

The President's Budget proposes additional investments to lower costs for workers and families and strengthen our economy while reducing the deficit, including making permanent the expansion of tax credits for health insurance premiums enacted in the American Rescue Plan and extended in the IRA and expanding the Earned Income Tax Credit, Child Tax Credit, and Low-Income Housing Tax Credit. These proposals would help make health care more affordable, reduce child poverty, and give working families more breathing room in their household budgets.

We can make these investments while reducing the deficit by \$3 trillion over a decade through a combination of smart savings and tax proposals. President Biden and I have proposed implementing a Billionaire Minimum Tax so that the top .01 percent pay their fair share; raising the tax on corporate stock buybacks to encourage businesses to reinvest profits in their workers and grow their companies; and closing estate and gift tax loopholes that allow wealthy Americans to pay less than they would otherwise owe.

As a whole, the President's Budget will enable us to address costs that families face right now and to bolster our country's economic strength for the years ahead.

I'll now take your questions.

Secretary YELLEN. I will now be happy to take your questions.

Chairman SMITH. Thank you. We will now proceed to the question-and-answer session.

Madam Secretary, in all four of President Biden's budgets he plans to hit middle-class families with a multi-trillion-dollar tax increase, starting in 2026. He has promised to let the Trump tax cuts expire. Isn't it true that President Biden is promising a \$1,500 tax hike on a family of four earning less than 75,000 by that action?

Secretary YELLEN. The President has been very clear that no family earning less than \$400,000 will face a tax hike. He has not proposed such a thing since he took office, and he is not proposing to allow that to happen when parts of TCJA expire.

Chairman SMITH. So——

Secretary YELLEN. He——

Chairman SMITH. When you testified at the Finance Committee last month, you said, "The President does not have a plan to address the coming tax hikes." That was at the Senate Finance Committee last month. Isn't it true that, without a plan, the President would slash the Child Tax Credit in half, which means parents lose \$1,000 from their pocketbooks for each child each year?

Secretary YELLEN. The President has principles that will guide his negotiations with Congress over how to handle this, and his principles—he has made clear that he opposes increasing taxes on people earning less than 400,000. He supports cutting taxes for working people and families with children——

Chairman SMITH. So does that——

Secretary YELLEN [continuing]. To give them more breathing room——

Chairman SMITH. Madam Secretary, does that mean that he will support the Child Tax Credit to be made permanent at \$2,000 that was put in the Trump tax cuts? Would the President support that? Because that affects working families.

Secretary YELLEN. The President has proposed in his most recent budget expanding the Child Tax Credit, and has supported the Wyden-Smith legislation that would increase the Child Tax Credit now, as well.

Chairman SMITH. Would you say that it would be true that leaving the Trump tax cuts expired means President Biden would roll back Republicans' guaranteed deduction, resulting in a tax increase of \$3,373 for a family earning less than \$75,000?

Secretary YELLEN. What I said, what the President has clearly articulated, is that no family earning under \$400,000 will see their taxes go up in any set of proposals that the President is willing——

Chairman SMITH. So I appreciate that. We have looked at every budget that has been presented, and you have called for the expiration of the 2017 tax cuts, but there is no plan, as you testified before the Senate Finance Committee, saying that the President has a plan with regards to how to make sure there is no tax increases less than \$400,000.

I would love and welcome, and I think the American people would welcome, a plan from the President. In fact, he loves to interject in all kinds of policies. I would think he would want to, there.

In testimony before the committee, former Senator Phil Gramm called the Biden Administration's decision to cut out Congress and unilaterally negotiate a tax deal with bureaucrats in Europe, "The greatest abuse of the Constitution of the United States," was Senator Phil Gramm's comment when he testified here.

Each of the Biden Administration's failures at the OECD can be traced to its decision to act unilaterally and without Congress. Will you commit to reject any OECD profit reallocation plan that disproportionately impacts American companies or allow U.S. tax revenues to be stolen away by foreign governments?

Secretary YELLEN. Well, let me say that the Administration, the Biden Administration, has worked very closely with Congress to inform and get input on Congress's priorities to guide these negotiations over the last three-and-a-half years, and will continue to do that. And I strongly believe that the Pillar Two agreement that has been reached is very much in support of goals that are good for this country.

The United States has been the only country, until this agreement was signed, to impose a tax on the overseas profits of its multi-nationals. And with this agreement secured is that all countries now will tax the profits of their multi-lateral—multi-national companies, which creates a level playing field for American companies and will stop the race to the bottom. And the United States will benefit by adopting the minimum tax that is consistent with—

Chairman SMITH. So Secretary Yellen—

Secretary YELLEN [continuing]. The Pillar Two agreement.

Chairman SMITH [continuing]. The communication from the very first time we ever had a conversation, I raised the issue, for example, of the research and development tax credit not being accounted for during OECD, but direct government subsidies of the Chinese Communist Party get much more credit than our research and development tax credit.

You have said that you have worked with Congress. We have been raising that from day one. We have been providing how detrimental that would be to U.S. companies by empowering the Chinese, which you have visited that country several times in your tenure, which has empowered them, but you have done nothing with regards to that.

Secretary YELLEN. I am sorry, but we have.

Chairman SMITH. What have you done?

Secretary YELLEN. We are negotiating with other countries right now to try to get favorable treatment for the R&D tax credit, and I am hopeful that these negotiations will be successful.

And I would point out that other tax credits, including the green tax credits and credits affecting the Low-Income Housing Tax Credit have been codified as continuing under Pillar Two.

Chairman SMITH. So I will just reiterate again, our concern is with almost \$200 billion leaving American companies and going to foreign nations under the plan that this Administration negotiated with Europeans, and we are adamantly opposed to that.

The Democrats' so-called Inflation Reduction Act that was supposed to prevent electric vehicle tax credits from going to foreign entities of concern in China and adversarial nations. But Treasury

has created multiple loopholes that will send American taxpayer dollars to Chinese billionaires and Chinese manufacturers. Isn't it true that the foreign entity of concern rules written by your Treasury Department are more China-favorable than the same foreign entity of concern standards from Biden's Commerce Department for semiconductors?

Secretary YELLEN. I believe that they are similar. These are very strong restrictions that, beginning this year and then continuing next year, preclude companies from receiving the \$7,500 credit if this year they contain battery components that are—have originated in a foreign entity of concern. And next year it will affect critical minerals and processing.

We have worked very closely with the Department of Energy and the Department of Commerce, other—it has been an interagency work to formulate these FIAC rules in a way that will certainly restrict China from profiting from the tax credit.

Chairman SMITH. I think it is pretty clear that Treasury's version of these rules would allow Chinese billionaires to receive hundreds of millions of taxpayer dollars, as confirmed by the non-partisan Joint Committee on Taxation. So in response, this committee recently passed the End Chinese Dominance of Electric Vehicles in America Act, led by Congresswoman Carol Miller, which would close those egregious loopholes and protect the American taxpayer. Treasury must do a better job of pushing back against our foreign adversaries.

I now recognize the ranking member for questions.

Mr. NEAL. Thanks, Mr. Chairman.

Great job on China. You were firm. You were very strong, very assertive.

IRA has worked. How about the harmonization of international tax rates so people don't seek the lowest tax jurisdiction, even though that is not where profits have been earned?

Good work on the CHIPS Act. Really good work on the infrastructure bill. Certainly, the American Rescue package. This is a great story for us to tell.

So I want to give you some time to talk, Madam Secretary. Implementation of the Inflation Reduction Act is really important. Let me give you a couple of minutes to talk about that.

Secretary YELLEN. Well, let me just start by saying that although there is still more work to do, we have made tremendous progress implementing it. We have completed more than 60 guidance projects, and these are all on critical and complex issues. And we have been focused on getting the issues right. This involves collaboration with the Department of Energy, with EPA, and other experts to make sure that we are implementing the law effectively and as intended.

It is also tremendously important, the impact that the IRA clean energy credits are having. We can see that they are catalyzing hundreds of billions of dollars of investment in cutting-edge, clean energy technology and strengthening our supply chains. and at the same time lowering emissions in line with our climate goals and creating good jobs across the country, and particularly in parts of the country that really have not seen a lot of burst of economic activity.

Treasury has been doing research on the impact of the Act, and what we find is that investment is especially strong in communities that have not seen a lot of investment, that have lower income and a smaller fraction of college-educated workers. So this is making a huge difference. The response has been enormous, and I have had the privilege of seeing many of the projects that are being spurred, as well as training that is taking place. I have had the privilege of visiting many workforce training programs that have been started to give our workers the skills to fill the good, high-wage jobs that are being created by this IRA.

Mr. NEAL. Thanks. And could you speak to labor participation rates?

Secretary YELLEN. Yes. Labor force participation rates actually have moved up substantially for adult workers, male and female. They have now exceeded the—where they were pre-pandemic. They are moved up a great deal and overall have moved up, as well.

And there is a downward trend that we see in labor force participation due to demographics, but this is really offsetting that. And this means not only more people working—and also in response to higher real or inflation adjusted wages. It also alleviates supply constraints, and it is one of the factors that has enabled our economy to grow last year, for example, at 3 percent and to create more than 200,000 jobs a month on a consistent basis.

Mr. NEAL. Nine million jobs every day in America go unanswered, as we know. And that is part of the skills alignment that you have just spoken to. A better job for all of us has required perhaps community colleges.

But just as I close out—and I thank you for your testimony—I also want to point out something else. Everybody on this committee during my time objected to Chinese efforts to manipulate currency. So hearing now that the former administration is talking about the idea that they might manipulate currency, they might threaten the independence of the Federal Reserve Board, I never thought the day would come when it would be Democrats standing up for the independence of the Federal Reserve Board before our Republican colleagues. And consistently, both parties stood up against Chinese currency manipulation, and you were a very remarkable part of that.

So we thank you for your testimony; delighted you are here.

Secretary YELLEN. Thank you so much.

Chairman SMITH. Thank you. I now recognize the vice chairman of the committee, Mr. Buchanan.

Mr. BUCHANAN. Thank you, Mr. Chairman.

And thank you, Madam Secretary, for being here. We appreciate your service. A lot of us have had an opportunity to work with you over the years. I want to touch on two things and have a little bit of a conversation.

IMF came out a couple of days ago with a report. They are very concerned about where we are at financially. My background before I got here, 30 years in business, a lot of entities, you know, basically hundreds and hundreds of balance sheets and income statements. I am very concerned, as well, because at some point, you know, 49 out of 50 governors have to balance the budget. You can't continue down this road.

Now, they are concerned because our deficit this year went from 1.4 trillion last year to 1.7. Interest on the debt, as you know, is close to a trillion. I have been here long enough, not quite 20 years, but been here long enough to clearly know that in the last 20 years it is over \$20 trillion in debt. And now there is a lot of finger-pointing going on, but we need to find a way to work together. It has got to be dealt with at some point.

I know you have laid something out, but I have heard these stories—not so much from you, but others—about pretty pictures down the road. But I look around the room here, and I have 10 grandkids, and I look around the room, and there are a lot of kids in here under 30, and we are spending their money and we have got to get very real about it.

If you are in the State of Florida, one thing they have to do is pass a balanced budget amendment. That is the only thing they have to do, but they have to do that. And by the way, 49 out of 50 governors have to do the same thing.

So I guess I ask you, what is your feeling about the IMF and their report a couple of days ago, where they are very concerned about where we are at financially and where we are going?

Secretary YELLEN. Well, I would say I am not terribly concerned about where we are, but I do have concern about where we are going unless we undertake some significant steps to reduce the budget deficit. And if you look at the President's 2025 budget, you will see that he has proposed \$3 trillion in measures to reduce the deficit over the next decade. I think that is important, and—

Mr. BUCHANAN. Let me ask you, Madam Secretary—

Secretary YELLEN [continuing]. What it does is it keeps the—a key metric of the burden of the debt, which is real net interest that we have to pay on the debt

Mr. BUCHANAN. I am limited on my time, and I want to get to this other question.

You have talked about nobody paying any taxes above 400. I was chairman of the Florida Chamber, 130,000 businesses in the Chamber, and I would say 95 percent were pass-through entities. You are talking about letting that sunset. So what that means, so you understand, if someone has got 200 or 300 employees, or 50 employees, you could very well be at 53 percent, 54 percent taxes all in, because the pass-through rate would go back to 39.6, there is a 3.2.

And then, if you look at states—I hate to say it, California and New York and some of the other states—they are great states, but they have another 10, 15 percent tax on top of it. So pass-through entities could very well—and then you are looking to get rid of 199A—could very well be north of 50 percent.

What are your thoughts on that?

Secretary YELLEN. Well, the President is committed to ensuring that no family, including those with pass-through businesses, making under \$400,000 would see their tax increase. But he does believe, for the sake of tax fairness, that it is appropriate—

Mr. BUCHANAN. Well, let me—

Secretary YELLEN [continuing]. For wealthy individuals—

Mr. BUCHANAN. Let me just show you—

Secretary YELLEN [continuing]. And corporations to pay more.

Mr. BUCHANAN. I have been in the real world in terms of building businesses and everything else. You might have 60, 80, 90 employees. You make 600, but then you have got to give up half of it or a good portion of it. Just 400 is nothing if you are trying to build a business, small and large. I am not talking about large corporations, I am talking about small businesses. And it will be a huge burden on these entities, you know, from that standpoint.

So I am just telling you, if I look across Florida, a lot of these small and medium-sized businesses, yes, they do make 600, but they don't take home 600. They take home 100, 150, 200. They leave the capital in there to grow and build their business. That is the reality about where that is at.

What are your thoughts?

Secretary YELLEN. Well, as I said, I think the President feels it is important to tax those who are earning very high incomes at higher rates.

Mr. BUCHANAN. One big thing is 199A. Where are you at on that, in terms of whether you are going to let that sunset, 199As, a 20 percent for a pass-through entity?

Secretary YELLEN. I am not sure, I need to get back to you on that.

Mr. BUCHANAN. Yes. Well, let me know, because that is very critically important. We went from corporate rates, 35 to 21, but you can't have pass-through rates at 40 percent. It makes no sense because everybody is going to move to a C Corp.

Mr. BUCHANAN. With that I yield back.

Chairman SMITH. Mr. Doggett is recognized.

Mr. DOGGETT. Thank you so much for your testimony today about a budget that demonstrates that we can put our country on sound financial footing, reduce our deficit, and make some new investments so long as we demand that the well-connected and large corporations pay their fair share, and that we begin to close some of the loopholes in a tax code that is so full of holes it looks like Swiss cheese.

In contrast, what the chairman has been urging the Biden Administration to do is to embrace an extension of all of the very inequitable Trump tax breaks that I have seen estimates would cost \$3.5 trillion in additional debt. At the same time that they express all this concern about the debt, they seem to be about building more of that debt. And I appreciate the fact that the President and you certainly understand the ramifications of that.

They also spend a lot of time defending corporations that like to hide their profits on American sales in foreign tax havens. And I appreciate the leadership that you have shown the world at OECD and elsewhere to stop this race to the bottom.

Why is it important that the United States implement fully the agreement that the European countries are already implementing to stop this global race to the bottom in corporate taxation?

Secretary YELLEN. Well, thank you. I believe that this race to the bottom in corporate tax rates took place over decades around the world, one jurisdiction competing with others to attract investment, and the only beneficiaries from that were really the companies themselves. Workers in all the countries where this was taking place ended up bearing more of the tax burden, and countries

found it increasingly difficult to tax corporations to raise the funding that we need to support middle-class families and to invest in our country.

And so stopping the race to the bottom means multi-nationals based in every country around the world will all face the same minimum tax. Some countries will charge more than the minimum tax. We have proposed and believe that the United States can—given the environment for business in our country, we can afford to do that, and we have proposed a minimum rate of 21 percent. Also, that would be in line with our proposal for the corporate alternative minimum tax.

Mr. DOGGETT. As you know, some of the Republicans that really don't believe in taxing corporations at all have said, well, if you go above 15 percent, which they don't support either, and you go to a higher level, that this will reduce American competitiveness.

How is it that our corporations, our multi-nationals would remain competitive if they pay a rate on their foreign profits that is higher than 15 percent?

Secretary YELLEN. Well, competitiveness really has to do with differentials in incentives across countries. And prior to Pillar Two the United States was the only country that taxed the overseas earnings of its multi-nationals. We have the GILTI tax. It is a lower tax rate, and it is not country by country, but our companies did just fine with that. The rest of the world had nothing. Now the rest of the world will go to a country-by-country 15 percent minimum, which would leave the United States with the lowest rate. And we can—even if we go up to 21 percent, the differential is substantially smaller than it was before.

Mr. DOGGETT. Thank you. I have also heard increasing concern that we place our cleaner domestic production on a more even playing field, the fact that we are importing steel and aluminum and some other products that are made in a very dirty environment abroad. What do you think should be done about trying to see that American companies are competitive, are not being subject to anti-competitive practices with this dirty production?

Secretary YELLEN. Well, President Biden proposed, I believe last week or the week before, to actually raise taxes on—tariffs on Chinese steel. Our firms are cleaner and China, in steel, suffers from tremendous overcapacity, which leads it to really sell it on fairly low prices globally. And I think it is appropriate to do that.

Mr. DOGGETT. Thank you for your leadership.

Secretary YELLEN. Thank you.

Chairman SMITH. Mr. Kelly is recognized.

Mr. KELLY. Thank you, Mr. Chairman.

And Secretary, thank you for being here again and for spending so much of your life in working in this body to try and make policy that actually makes sense.

That is why I still keep trying to figure out Pillar One and Pillar Two, the possible loss for us of almost \$200 billion. What is the offset for that?

So how do we replace that lost revenue? How does that work into the whole idea of this?

Secretary YELLEN. Well, that revenue estimate—you are referring to JCT, I believe, and that is an extreme negative case in—

they indicated in their analysis that the outcome overall is uncertain. And in the most likely cases the outcome in terms of tax collections would be positive, not negative.

Mr. KELLY. Now, I know that is all debatable, and I keep wondering why in the world the United States is so hell bent on giving up market to foreign countries and saying that this isn't the best interest globally of what we want to do. I am more interested in a very strong United States that remains the strongest country on the face of the Earth, that we don't have to depend on anybody else.

Now, I understand that the U.S. is going to be presented an agreement on Pillar One to sign in the next two months. So does Treasury commit to work with Congress before signing the OECD Pillar One agreement?

Secretary YELLEN. We have been in touch with Congress throughout this process.

One of the things we heard from Congress on Pillar One is that there needed to be an opportunity for public comment. We heard that certainty around what is called Amount B that has to do with transfer pricing is very important to Members of Congress, and it is something where we need to make sure we get firm commitments from other countries.

We also heard from Congress that getting a very clear definition of digital service taxes, what they are and what is ruled out, all this is very important and we agree. And those are our red lines, and it is what we are negotiating for in the final months of negotiations on Pillar One.

Mr. KELLY. And I agree with you on everything you have said, that on its best day this can be—this whole scenario, what we are going through—can be considered unbelievably complicated, and how at the end of the day it is in the best interest of the United States.

I have always thought that, you know, we seem to be getting into a push and pull on what constitutional authority lies with which body, and the idea that somehow Congress will be the afterthought in a process that absolutely it is supposed to control.

So I am really interested, as you go forward on this, the sharing of that, all that information—I just don't understand the negotiations and the constitutional authority. And I know you can do certain things, and there are other things that you have to run through the Congress. My concern is that the Congress seems to be an afterthought now, and not the main consideration when we do these negotiations. And it is like, well, this is what you gave us some authority to do, so we are going to go ahead and do it. I just don't understand at all how we sell this to the people we represent, that somehow this is in the best interest of the United States.

I still want to dwell on the fact that we have been losing market share because of policies that we have initiated. Not so much that we have strong foreign competition, it is that we have weak policy when it comes to maintaining our own market share. And for whatever reason, we seem to have become a global entity as opposed to the strongest country the world has ever known and a nation that is the first responder in everything that goes bad in the world. We are the first ones to be there, and we keep ceding off all of these

different things that we have, all of these different abilities that we have.

And so, no, I think it is more important to act globally right now. I would just suggest that I am looking at the globe right now, and the globe is looking at us to see—I wonder when the Yanks are going to show up. I just hate to see us keep giving up authority, and the negotiations taking place from the executive branch, and then being run through the Congress at a later date.

So all I am asking you to do is commit. We need to know what is going on and what is taking place. I don't like giving anybody a pen to go ahead and sign on to something in an international trade and a global tax initiative. It just doesn't make sense to me. And I think it is totally unconstitutional. And in fact, it is just not the right way to do things.

Secretary YELLEN. We have consulted with Congress throughout over the last three-and-a-half years.

Mr. KELLY. Yes, yes. Well, I appreciate what you are saying.

Secretary YELLEN. And any agreement would need to be—

Mr. KELLY. Yes, yes, it depends—

Secretary YELLEN [continuing]. Legislated and—

Mr. KELLY. Ms. Yellen, excuse me, just to reclaim my—my time is up, but it depends on how you identify “We have consulted with Congress.” I like to be consulted before something happens, not after, where it just happened and—you guys are willing to sign on.

Listen, thank you for your service to the country. I think it has been incredible. And thank you for being with us today.

Mr. Chairman, I yield back.

Chairman SMITH. Thank you.

Mr. Thompson.

Mr. THOMPSON. Thank you, Mr. Chairman, and thank you, Secretary Yellen, for being here today. But more important, for your tremendous leadership and your steady handedness in your position not only now, but over the years.

I would like to start by noting a couple of data points, a few data points: 15 million jobs have been created under President Biden; more Americans have health insurance than ever before; Democrats expanded Child Tax Credit, cut child poverty by over 40 percent and benefitted over 35 million families; the IRS is holding wealthy tax cheats accountable, and has already recovered over \$500 million in taxes owed; wages are outpacing inflation; and our economy is outperforming the rest of the advanced countries around the world. And Madam Secretary, you are in large part responsible for those successes, so thank you very much.

I would like to start with a couple of things that you mentioned in your testimony. First is the implementation of the Inflation Reduction Act. As you mentioned, there were a host of provisions in that bill designed to create jobs, boost renewable energy, and lower costs for consumers. Can you talk a little bit more about the implementation of the clean energy tax credits in that Act?

And are those incentives working?

And what sort of investment are you seeing in renewable energy, manufacturing jobs, et cetera?

Secretary YELLEN. Thank you. First, thank you for your kind words.

So we are working around the clock to write the regulations that will provide certainty to households and businesses around the credits. We are seeing the ERA clean energy credits catalyze investment in clean energy technologies.

We are concerned about our supply chains, particularly being over-reliant on China for many aspects of our clean energy, whether it is solar panels or batteries. We want to make sure that we are strengthening our supply chain at the same time we are creating good jobs and lowering emissions. And we are seeing many good jobs, and the wage and apprentice requirements to receive that large bonus really ensure that the jobs that are being created are good jobs.

We are seeing investments in many parts of the country, especially places that are in need, whether they are areas of the country that were dependent on fossil fuels and have seen coal mines or plants close, areas that just haven't benefitted from very much investment. We are especially seeing good results there.

And we are making sure that people know who can benefit from this law. It has unique features that non-profits and state and local governments can actually benefit from this law through the direct pay feature. We are working hard to make sure that potential beneficiaries understand how this can positively affect them.

Mr. THOMPSON. Thank you very much. I would also like to ask about 2025 and the upcoming expiration of the 2017 Republican tax bill. I appreciate the President reiterating that no one making under \$400,000 a year will see a tax increase.

One of the things that has been left out by my friends on the other side of the aisle in talking about this is that it wasn't paid for, their bill was not paid for. And that, by definition, is inflationary.

So in your view, what are some of the more responsible ways that we might offset the costs of any of the TCJA extensions?

Secretary YELLEN. Well, the President has proposed a very large number of raisers in his budget, and all of them could be used for this purpose. He is proposed raising the stock buyback tax; raising the corporate alternative minimum tax; enacting Pillar Two, which would bring in substantial revenues; raising—we would raise—proposed to raise the corporate income tax to 28 percent—still a cut relative to pre-TCJA, but substantial revenues; a billionaires tax that would ask those extremely high-income individuals, wealthy individuals to pay something more in line with what nurses and firefighters pay in their taxes. And there are a wealth of ideas there on how we can finance this.

Mr. THOMPSON. Thank you, Madam Secretary.

I yield back.

Chairman SMITH. Mr. Schweikert.

Mr. SCHWEIKERT. Thank you, Mr. Chairman.

Madam Secretary, first in this discussion, conversation, my basic principle is at the scale we must borrow at we want stability. We want liquidity. You know, we don't need any hiccups out there. And if some of this is a little off, you can pass me off to staff.

But first I want to touch on cash balances. And part of this is there are a couple of reports out there that basically say statutory mechanics, when the current authority for borrowing starts to run

out we should be doing an operating cash balance of around \$23 billion. That seems dramatically too low. You know, in previous years you would run—the Treasury would in 2023—a \$600 billion cash balance.

Secretary YELLEN. That is right.

Mr. SCHWEIKERT. Today you are running over 900 billion.

This is actually more of a mechanical, technical question. Do you need us, as the Ways and Means Committee, to update any statutory authorities or mechanics of what type of operating balance do you need to maximize stability?

You know, you saw the blip we had yesterday when you did your, you know, refunding announcements, and that was only, what, a \$41 billion tick up for that quarter. What do we do to maximize interest rate efficiency? Do you need any additional authorities?

Secretary YELLEN. I don't think we need legislation. We have standing policy on operating cash balances. And I believe around 500 billion would be a normal level, given the volume.

Mr. SCHWEIKERT. Well, but you have been running dramatically higher than that traditional 500, 600 billion.

Secretary YELLEN. Well—

Mr. SCHWEIKERT. You know, I think in the previous quarter you were running in the mid-800s; now you are running over 900.

Secretary YELLEN. I think it depends on what our flow of expenses are. It can vary over time. And, of course, it has ups and downs as we—you know, tax collections are bunched around April 15th.

But what caused our cash balances to run to exceptionally low levels in the past was the failure of Congress to raise the debt limit.

Mr. SCHWEIKERT. Well, but where I was going with that is there is an analysis that the statutory authority actually requires you to go down to 23 billion, and that may be one of your legal team saying, okay, you have the authority to ignore that interpretation of the statute.

So, look, this is not a gotcha question. I want to know what we can do to help maximize stability.

Secretary YELLEN. I would be glad to get back to you with details on that. But I would say during my time the major threat I have seen to our cash balance is that when Congress fails to raise the debt ceiling—

Mr. SCHWEIKERT. The trigger dates.

Secretary YELLEN [continuing]. In a timely way, we have absolutely no alternative but to run down our cash balances. Otherwise, we would be unable to pay our bills.

Mr. SCHWEIKERT. Yes, understood. I have a whole chart on your extraordinary measures and what is in your balances.

I was just sitting here playing, and I have smart, much smarter, people on staff—like your billionaire tax. Okay. Great politics. Do I read it properly in your testimony, it is a .01 percent? Okay, fine. But that works out to, over the next 10 years, on an average of 0.143 percent of GDP. This year our burn rate is close to 9, 9.6 percent of GDP.

My fear is the politics of theatrics and the actual math. We do a crappy job telling each other the truth and telling the public the

truth of the fiscal—because you gave some brilliant speeches when you were Federal Reserve chairwoman on this type of debt future. And we are hitting numbers that we weren't supposed to hit for 10 years.

When we did a quick analysis of some of the President's tax proposals, we were coming up—when we did the economic effects—of about a point and a half, 0.6 percent of GDP. Okay. But if we are burning over nine percent of GDP in borrowing, and this is in the time this year where tax receipts are up, what, seven percent?

Secretary YELLEN. I am not sure just how much they are—

Mr. SCHWEIKERT. My fear is, as a committee, we are not telling each other the truth of the scale of the borrowing stress. We are basically, the United States and China, we are consuming much of the world's available capital. I really wish we could have a more adult conversation of the scale of—

Secretary YELLEN. I—

Mr. SCHWEIKERT. This is almost hitting dystopian levels of numbers.

And with that, Mr. Chairman, I yield back.

Chairman SMITH. Mr. Larson.

Mr. LARSON. Thank you, Mr. Chairman.

And Madam Secretary, welcome to the committee. I want to associate myself with the remarks of Mr. Neal in saluting, I think, what every member on this committee knows: Your remarkable and incredible tenure of service to this great nation of ours, we are blessed to have you with us today.

We are also blessed to have with us today another great woman who is in the audience with us today, Elsie Pascrell. And I think every member of the committee would join with me in recognizing that she gets a direct shot to heaven. [Laughter.]

Mr. LARSON. Elsie, welcome here to the committee.

Madam Secretary, I want to commend the Biden Administration. I think Mr. Thompson went through the list of accomplishments, et cetera, but I especially want to focus on what you have repeatedly said, that the President—and he has been rock solid on this—has said that he is not going to raise taxes on anybody who is making under 400,000.

And he has also been out there as a champion of both not only protecting but preserving Social Security. And again—and let's do the reality check here by saying that people making over \$400,000 ought to be paying what people making 35, 50, 75, 100,000 are paying. And currently, because I think this comes as a surprise to most Americans, most earning above that level pay little or nothing. Millionaires end up finishing contributing to Social Security in February, but zillionaires and wealthy people pay little at all or they circumvent the tax code all together and don't pay into the nation's number one anti-poverty program for the elderly and the number-one anti-poverty program for children.

I commend President Biden for not only saying that we want to protect Social Security, but we want to expand its benefits, and we can do so by having all Americans pay their fair share. He couldn't have been clearer in his State of the Union message that this is what it is about.

Of course, as you know, Madam Secretary, it is Congress that has to make these moves, and Congress hasn't done anything to enhance Social Security in more than 50 years.

And talk about numbers, with 10,000 Baby Boomers a day becoming eligible for Social Security, it is long overdue that Congress take action. I applaud the President for doing so in such a straightforward, dramatic way, and paying for it.

So my brief question to you, Madam Secretary, could you discuss the importance of Social Security and why the President has adhered to making sure that we are not taxing people below 400,000?

Secretary YELLEN. I would be happy to. Every year Social Security lifts tens of millions of seniors out of poverty. It is the Federal Government's most important anti-poverty program, and it is a guarantee that generations of Americans have counted on. Namely, after working hard throughout one's life, that you will be able to retire with security and with dignity.

And for those reasons, President Biden feels very strongly that we need to preserve the benefits and even extend the benefits of Social Security and honor the commitments that we have made to the nation's seniors. He has committed to working with Congress to protect Social Security for this generation and future generations.

Mr. LARSON. I thank you, Madam Secretary.

And I yield back.

Chairman SMITH. Dr. Wenstrup.

Dr. WENSTRUP. Thank you, Mr. Chairman.

Thank you for being with us today, Secretary Yellen. I appreciate it. Much of our conversation today has been focused on the future of our nation's tax code, of course, as we approach the expiration of many key policies from the Tax Cuts and Jobs Act next year.

You know, when I think about tax policy, I think about making America the best place in the world to do business and, for that matter, the best place to work. And right now we are in a fierce global, economic, political, and strategic competition. It is not the same as after World War II. Our adversaries, like China, want to dominate the world markets, and they are doing that. And they want to make America and our allies dependent on key industries and supply chains. I know you know that. Keeping our tax code globally competitive is a crucial part of strengthening our domestic manufacturing base and reducing our dependence on unreliable supply chains or those that can be used as weapons, if so desired, by our adversaries.

Secretary, I know you have spoken at length about the need for de-risking—I agree with you on that—when it comes to our economic relationship with China, and your desire to see more friendshoring of our critical supply chains.

I also know you recently visited China—thank you for doing that—to discuss economic issues, including the massive subsidy-driven industrial overcapacity that China has built, which is distorting global markets. I am not sure that we can always change what they do and their practices, but we can and should see what we can do to counter that, and I am glad you focused on the risk of China and what they pose to our security.

But I am concerned that the Administration's tax policy proposals would take us in exactly the wrong direction when it comes to our economic security and our national security, for that matter. The Tax Cuts and Jobs Act was a huge step towards making our tax code globally competitive, bringing more business investment back to the United States. Since it passed, we have seen zero corporate inversions, and instead we have seen American businesses bringing back their overseas earnings to fuel investment and wage growth here in the states.

So now, more than ever, we need to be working together to build on that type of progress, not reverse it by imposing crippling tax hikes on American families and businesses. I believe that is exactly what will happen if we do not act to renew key provisions of the 2017 tax reform law when they expire next year.

Meanwhile, the negotiators from your department representing us at the OECD are preparing to give away the U.S. tax base and allow foreign countries to impose discriminatory taxes on U.S. companies. This does not help us. Anyone who runs a business would understand that. I believe that tax increases proposed by the President's budget and the failed global tax negotiations being supported by this Administration would severely harm our efforts to rebuild our domestic manufacturing and bring home critical supply chains.

Secretary, the President's budget proposes increasing the corporate tax rate—it is one of the highest in the world, even higher than Communist China—which will make it much harder to bring manufacturing home from China and to meet your desire to de-risk from the PRC.

One example: The Chinese have a monopoly on generic medications, all the way down to the Active Pharmaceutical Ingredients. How do we break that monopoly and reduce our health risk, our national security risk by increasing corporate tax rates, making us unable to compete?

I mean, are you against or are you for domestic supply chain production to enhance our national security and our national health security for our critical needs? Because I just don't see how increasing corporate tax rate, making us less competitive in the world is going to bring business back to the United States, where we need it most.

Secretary YELLEN. I certainly agree with the goal of having resilient supply chains. The idea of friendshoring means we will work with trusted allies.

And in addition to sourcing domestically, in the case of critical drugs, certainly I think that is an area where it is important that we have domestic capacity and are not totally reliant on China and other countries that may not prove dependable in the future.

Dr. WENSTRUP. But—

Secretary YELLEN. And there are a variety of ways to promote this.

Dr. WENSTRUP. Excuse me, though, who are we going to depend on, then?

If we are increasing our corporate tax rate, that doesn't make us more competitive. And are we going to rely on our allies to reduce theirs? Is that the idea?

I mean, this just makes no sense.

Secretary YELLEN. Well, we—

Dr. WENSTRUP. We have had no one leave.

Secretary YELLEN. I would point out that the Pillar Two agreement does impose taxes on China, that regardless of what their subsidies are or how they choose to tax, the United States and other countries that adopt Pillar Two will have the ability to place taxes up to this minimum tax on China to try to level the playing field.

So China will not gain any advantage if it chooses—it has said it will implement the deal.

Dr. WENSTRUP. I doubt that—

Secretary YELLEN. But if it doesn't do so, we will implement the deal on Chinese multi-nationals that compete with ours through a provision called the Undertaxed Payment Rule.

Dr. WENSTRUP. Well, you had conversations with them. I would doubt that they said that they would cut their subsidies.

I yield back.

Chairman SMITH. Mr. Pascrell.

Mr. PASCARELL. Thank you, Mr. Chairman.

Welcome, Madam Secretary. So unemployment is at an historic low. Interrupt me when I say something that is not correct or can't be proven by data. Wages are rising. I want to come back to that in a minute. Inflation has plummeted. We got work to do. Factories are booming. America's economy is the envy of the entire world. There is no two ways about it.

So I am proud of our efforts to make big business and rich tax cheats finally pay their fair share. What the heck is wrong with that? And we have made progress.

We have not made progress in the area of the income gap that still exists, even when wages increased four to five percent. We have got to do something about the code, the tax code, the very tax code.

You can draw a straight line from these winds to the policies enacted by President Biden and, yes, Democrats.

Secretary Yellen, I am glad the budget includes finally closing the carried interest loophole, maybe the worst loophole in the entire tax code. My Ending Wall Street Tax Giveaway Act mirrors your proposal to ensure Wall Street executives and private equity tycoons pay their fair share. We came very close to closing that loophole, if you remember, in the Inflation Reduction Act. And I am not giving up because if we don't do that we continue to send the wrong message to the taxpayers. Now, you talk about competition, that is what we need.

Madam Secretary, as the Congress continues to consider future tax legislation, can you commit to making carried interest fairness a top priority?

Secretary YELLEN. Yes.

Mr. PASCARELL. Question two. Early this year the GAO released a report. I requested that report on ways to crack down on wealthy tax cheats. It found that good enforcement returns \$12 for every dollar spent. You remember that report?

But identifying high-dollar cheating is a big challenge. They got every trick and every lawyer in the trade as rich tax cheats use so-

phisticated and brazen tactics to obscure their earnings. That is nothing new over the last 45 years.

Madam Secretary, can you expand on plans to address gaps in the IRS hiring, training, and tech so that the agency has the tools to close the tax gap?

Secretary YELLEN. The IRS is doing exactly that using the funding provided in the Inflation Reduction Act. Its budget was so limited after decades of cutting its budget as the economy grew that enforcement and the ability to hire competent tax lawyers, accountants, data scientists, and the like, that audit rates fell to exceptionally low levels on wealthy individuals, complex partnerships, and large corporations.

And with the infusion of funds that the IRS has received in addition to, and importantly, improving consumer service dramatically, it is going after all of those tax cheats who are responsible for what is estimated as a \$7 trillion tax gap over the next decade. And it has had an early success in going after 1,000 individuals making more than \$1 million who owed back taxes. It has already collected \$500 million.

But there is much further to go, and that is where the enforcement dollars are going. No increase, as I have promised and as the commissioner has promised, on households or small businesses earning under \$400,000. It is all going to the areas that you named.

Mr. PASCRELL. Thank you, Madam Secretary. Welcome to the neighborhood.

And I yield back.

Chairman SMITH. Dr. Ferguson.

Dr. FERGUSON. Thank you, Mr. Chairman.

Madam Secretary, thank you for being here. I want to see if you can help me understand some math, if you don't mind.

With OECD proposals, Joint Tax said that Pillar Two is going to cost us \$120 billion in tax revenue over a 10-year period. And OECD would—Pillar One would cost just \$40 billion over 10 years. This is JCT. So you know, we have to use this. So you are looking at \$160 billion, probably on the conservative side, of lost revenue coming into the Treasury because we are turning that revenue over to other countries.

All right. If that is the case, and we are going to lose that revenue, that is one thing. But I can just point to two Georgia companies that will tell you that their analysis of Pillar One will cost them combined about \$1 billion in sales. Now, if a company is going to lose \$1 billion in sales, that means they are going to start cutting back, which means that it is going to put my fellow Georgians out of work. That doesn't make a whole lot of sense to me.

So again, according to JCT, between Pillars One and Two, about \$160 billion in lost revenue. Now, just laying the groundwork there, you made mention that you were going to propose or work with the President and our colleagues on the other side of the aisle to raise the corporate minimum tax, AMT, the corporate tax to 28 percent, implement a new billionaire tax. You had a laundry list of items, correct, that you believe we should be raising taxes on?

Okay, so let me ask you something. If a company owes the Treasury \$200 million in taxes, and you would like to collect those taxes

to help with the deficit or spending, correct, but then they can turn around and write off all of that by buying green energy tax credits, how much of that money, then, of that \$200 million is going to come into the Treasury?

I mean, if I can wipe out my tax liability by buying green energy tax credits, what good does that do in coming into the Treasury?

Secretary YELLEN. Well, if the firm is using the transferability feature to buy these tax credits, then another company that we want to benefit from those credits, the stimulus, and incentive that they offer but that lacks—

Dr. FERGUSON. But that—

Secretary YELLEN [continuing]. Sufficient tax liability, this is a way in which we provide—

Dr. FERGUSON. But we are giving a pass to—I mean, analysis has shown that about 90 percent of these tax credits are going to go to companies with over \$1 billion in revenue.

And again, if you are looking to bring revenue into the Treasury to pay for whatever—

Secretary YELLEN. Look, it is really the same thing as essentially making the tax credits refundable, which would have been—

Dr. FERGUSON. How would we—

Secretary YELLEN [continuing]. An alternative. That is a—

Dr. FERGUSON. Why would we do that? Why would we give—

Secretary YELLEN. Because—

Dr. FERGUSON [continuing]. Companies like Amazon and Walmart, these major corporations—

Secretary YELLEN. Because—

Dr. FERGUSON [continuing]. Refundable credits to go spend money in the green energy sector?

Secretary YELLEN. Because many of the companies that are responding to the IRA and building the clean energy economy we want to see are companies that lack sufficient tax liability to be able to benefit from these—

Dr. FERGUSON. Wait a minute, wait a minute.

Secretary YELLEN [continuing]. Tax incentives.

Dr. FERGUSON. Madam Secretary, reclaiming my time, if you are going to go down that road, and you are going to say companies lack that tax liability, why are we doing it on green energy and not looking at pharmaceuticals, not looking at other technology?

But bottom line, why wouldn't we just say to Amazon, okay, not to pick on them, but they are a highly profitable company—why not just say, "You have got to pay your taxes, and then you go buy a fleet of battery-powered vans if you want to"? You are cutting revenues, you are giving a tax break to the very people that my colleagues on the other side of the aisle are saying, they want them to pay their fair share. But they are not going to pay their fair share because they are going to go down this green energy deal—

Secretary YELLEN. And—

Dr. FERGUSON [continuing]. That absolutely undermines our competitiveness. It doesn't make sense. The math doesn't add up.

Mr. Chairman, I yield back.

Chairman SMITH. Thank you.

Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman.

Welcome back, Madam Secretary. Thank you for your work.

Let me begin by offering my sincere appreciation to your staff, who are helping my office with a number of very complex constituent issues. Your staff is top notch, and for that I am grateful.

In addition, I thank Treasury for its effort to work collaboratively with states to identify the owners and beneficiaries of the \$30 billion in unclaimed savings bonds.

And I know that you cannot comment because the rule is not final, but I wanted to share concerns that Representative Estes and I and others on this committee have raised about the proposed rule. Given that most of these unclaimed bonds come from the middle of the last century, when African Americans and others were excluded from banks and often turned to Treasury bonds as a key investment, I suspect that a high percentage of unclaimed bond holders will be Blacks and people of other minority group identities. Given these concerns and given the success of state treasurers in helping people find unclaimed property, I worry that the proposed rules would greatly limit the ability of states to help Americans get back their missing savings bonds. My hope is that the final rule will allow Treasury to work more collaboratively with states, as we intended when we enacted the law.

And finally, in my remaining time, I would like to thank you for your hard work implementing the increased energy investment credit for solar power, especially in low-income communities, and ask if you could share any updates to this program.

Secretary YELLEN. Thank you very much.

And on the savings bonds issue, I appreciate your comments and we will make sure that they are adequately considered before final regs are finalized.

And on the bonuses for low-income communities, we have worked hard to clarify the rules and make sure that there is—that low-income communities—that is a special focus of the IRA—to make sure that they are able to benefit, especially from the credits for solar, wind, and other renewable energies. We are working to finalize a set of regulations on this, and there are also allocated credits for low-income communities that the Department of Energy is—has accepted applications and awarded funds.

Mr. DAVIS. I thank you very much. And let me just ask, are these proven to be effective in terms of job creation?

Secretary YELLEN. I think overall are—the data that we have amassed shows that the green energy—the green credits have been very effective at stimulating investment resulting in job creation. And those jobs are disproportionately in lower-income communities with lower college graduation rates, also in rural communities and in communities that have been dependent on fossil fuel and seeing that—seeing job loss there.

Mr. DAVIS. Thank you very much.

And Mr. Chairman, I yield back the balance of my time.

Chairman SMITH. Mr. Estes.

Mr. ESTES. Thank you, Mr. Chairman. And thank you, Secretary Yellen, for joining us today.

[Chart.]

Mr. ESTES. As you know, last month the inflation came in hotter than expected for the third month in a row, which is a hit to American families by itself. But it is not just a one-time impact. Inflation is cumulative. And hardworking Kansans have been suffering for three years now, as this chart behind me indicates.

You know, since Joe Biden took office inflation is up over 19 percent. The Joint Economic Committee estimates that Kansans are paying an average of nearly \$1,000 more per month for the same goods and services, the same food, the same clothes, the same gas, the same rent that they did in January of 2021. And since then, in total, the average Kansan household has spent \$23,600 more due to inflation. At the same time, net income is down almost four percent.

I know your boss and his Administration like to point to rosier numbers, but the fact is for everyday Americans the chart behind me is the epitome of Bidenomics, and it is a complete failure.

You know, several years ago, Secretary, you called inflation transitory. And since you have said that, I think that is the wrong word, but I guess I would like to ask you what you would call inflation now. What word would you use?

Secretary YELLEN. Well, inflation has come down considerably, and the consensus of thinking among economists is that it was largely due to supply shocks that are mitigating. And our inflation has been quite similar to that in other advanced countries around the world, which suggests it was due to supply shocks connected with the pandemic.

Mr. ESTES. I think you will have—

Secretary YELLEN. Inflation has come down—

Mr. ESTES. I think you will have a difference of opinion in economists. I mean, we even had Democrat and Republican economists in 2021 talking about the extra spending that was coming proposed by the Administration that was actually going to result in this inflation. And actually, that is what we have seen.

Secretary YELLEN. Well—

Mr. ESTES. You know, I think most Americans would use phrases like “crippling,” or “painful,” or “hindering their pursuit of the American dream.” In fact, my constituents tell me about the challenges they face when they fill up their cars, or buy their groceries, or pay the rent or mortgage. And the numbers show the pain behind me that is still continuing to increase to this day as a result of Bidenomics and the policies that have been increased by the Democrats over the last three years.

Secretary YELLEN. I think Americans care—

Mr. ESTES. I also want to switch gears a little bit before I run out of time. You mentioned earlier in a discussion with Chairman Smith that President Biden was not going to increase taxes on people making less than \$400,000. In fact, I have a tweet here from Joe Biden dated one week ago today in talking about the Trump tax cuts. And he said, “This tax cut is going to expire. If I am re-elected, it is going to stay expired.”

I did some quick calculations. And basically, what that means is that there is going to be a 25 percent increase in the tax rate on people that make less than \$44,000. There is going to be an additional \$14,000 tax increase on people making less than \$95,000,

and additional increases on others up until making the \$400,000. So if this tweet is right that came from President Biden, he is going to increase taxes on people making less than \$400,000.

Secretary YELLEN. President Biden has repeatedly issued a set of principles that will guide his negotiations, and he has repeatedly said that—

Mr. ESTES. I can send you the tweet.

Secretary YELLEN [continuing]. He will not support increases on families making under \$400,000. And I haven't looked at the tweet myself, but—

Mr. ESTES. I am sorry, I really want to get to one other point—

Secretary YELLEN [continuing]. That is not what he—

Mr. ESTES [continuing]. I really want to get to one other point before we run out of time, but I can send you this tweet if you would like to see that later, after the committee.

Secretary YELLEN. Well, I—

Mr. ESTES. But I do want to talk a little bit about OECD. I know it has been brought up before, particularly Pillar One and Pillar Two.

I mean, I have stated several times in the hearing room that, in principle, Republicans and Democrats are in favor of eliminating the discriminatory digital services taxes and provide tax simplicity and consistency for businesses in the growing digital economy.

However, despite the ongoing discussions, we are still seeing more and more countries like Canada enact DSTs, and the proliferation of Pillar One and Pillar Two has provided foreign countries the opportunity to raid our tax base. In fact, Pillar Two, as pointed out by the Joint Tax Committee on Taxation, is going to cost the U.S. Treasury tax revenue—Pillar Two itself, as pointed out by my colleague, Representative Ferguson—that it is \$120 billion.

And earlier this year JCT reported on Pillar One and noted that the plurality of in-scope countries would be from the U.S., and likely that the U.S. Treasury would forego between 100 million and \$4.4 billion per year in tax receipts. In fact, I recently heard from one Fortune 100 company that they would be required to send between \$100 and \$500 million from the U.S. Treasury to countries like France and Germany and Japan.

I think these policies that have been negotiated with OECD are dangerous for our U.S. tax base. We are already struggling to collect enough revenue, and I think we need to change course.

I am sorry, I am out of time. I would like to talk more about this with you.

But I will yield back, Chairman.

Chairman SMITH. Thank you.

Mr. Smucker.

Mr. SMUCKER. Thank you, Mr. Chairman.

Good afternoon, Secretary. I am over on this side. There we go. Fooled me, too.

I would like to just clarify with you for those listeners watching this today the impact of your budget on the debt. Can you tell me the current level of our debt? What is the current debt amount?

[Pause.]

Mr. SMUCKER. It is about 34 trillion—

Secretary YELLEN. Yes.

Mr. SMUCKER [continuing]. Which includes debt held by the—
intergovernmental debt, as well.

Secretary YELLEN. That is right.

Mr. SMUCKER. And can you also tell me what the projected debt will be at the end of this budget period, at the end of 10 years?

Secretary YELLEN. So normally we look at debt held by the public, which—

Mr. SMUCKER. Okay, we can use that number if you would like.

Secretary YELLEN [continuing]. Which is currently about 28 trillion.

Mr. SMUCKER. Right.

Secretary YELLEN. And in 2034, under our budget, I believe it would be around 45 trillion.

Mr. SMUCKER. Yes, the—

Secretary YELLEN. But GDP also grows, and the ratio to GDP would be a few percentage points more—

Mr. SMUCKER. Well, it would be—

Secretary YELLEN [continuing]. Than it is now.

Mr. SMUCKER. It would be at 128 percent, and now it is at 97. That is more than a few points.

Secretary YELLEN. No, it would be at 105 percent in 2034.

Mr. SMUCKER. Okay, that—debt held by the public. But it will be significant increase in—

Secretary YELLEN. It is now about 100 percent, so—

Mr. SMUCKER. Yes. Now 97, it would be about—it would be increasing. So it would be a significant increase in the debt.

Secretary YELLEN. A small increase in the debt.

Mr. SMUCKER. Yes, a significant increase in the debt.

I want to refer also to your report on the fiscal health that came out just a month or two ago of the country. And you show that, given current financial policies, including that in your budget within 75 years we will just continue to see that increasing, it would be at 513 percent, or above 500 percent of GDP at the end of a 75-year period. You say in that report the current policy is not sustainable, and the cost of delaying policy reform is significant, will make it much harder to implement changes that will affect that trajectory.

Do you think that is a real threat to the country going forward?

Secretary YELLEN. Are you referring to the Social Security report there?

Mr. SMUCKER. No, I am referring to your report on the nation's fiscal health done by the U.S. Treasury, signed by you.

Secretary YELLEN. Okay. So we need to enact policies to make sure that the debt stays sustainable and we are on a fiscally sustainable path. And the President has proposed over \$3 trillion—

Mr. SMUCKER. So let's—

Secretary YELLEN [continuing]. Of deficit reduction—

Mr. SMUCKER. Let's talk about that. We have already established that the debt will increase significantly under this budget. So where do you get the three trillion in savings? Where does that come from?

Secretary YELLEN. Well——

Mr. SMUCKER. Because you are not decreasing spending.

Secretary YELLEN. Well, in some areas there are spending decreases.

Mr. SMUCKER. Not overall.

Secretary YELLEN. But most of it comes from additional tax revenues——

Mr. SMUCKER. Because we are allowing——

Secretary YELLEN [continuing]. Because revenues have been——

Mr. SMUCKER. Because we are allowing the Tax Cuts and Jobs Act rates to expire. Correct?

Secretary YELLEN. Partly, but not——

Mr. SMUCKER. About two trillion of three trillion. About two trillion——

Secretary YELLEN. But not for——

Mr. SMUCKER. You are projecting an additional two trillion in revenue——

Secretary YELLEN. We are projecting——

Mr. SMUCKER [continuing]. And counting that towards debt——

Secretary YELLEN. We are projecting, in addition to that, a higher corporate income tax, moving that up to 28 percent, putting in place Pillar Two——

Mr. SMUCKER. So Mr. Chairman, I would like to submit for the record an article from the Washington Post that shows the \$2 trillion and talks about that being included in the budget, and then shows a significant portion of that will be taken by families who are earning less than 400,000.

Secretary YELLEN. He is explicitly——

Chairman SMITH. Without objection, so ordered.

[The information follows:]

President Biden's \$400,000 tax pledge has a 'magic asterisk'



Analysis by [Glenn Kessler](#)

The Fact Checker

March 18, 2024 at 3:00 a.m. EDT

"The budget reduces the deficit by about \$3 trillion by making our tax code fairer."

— **White House budget director Shalanda Young, in remarks to reporters, March 11**

A White House budget plan is aspirational and political — a wish list of policies that often fare poorly on Capitol Hill when the real spending bills are written. The Fact Checker spent many years as an economics and budget reporter and knows that although the numbers may add up in a White House budget, the assumptions are often dubious.

One favorite accounting gimmick of Ronald Reagan was dubbed the "[magic asterisk](#)." These were spending cuts that would be identified later — but never were.

In his 2025 budget plan released last week, [President Biden](#) has a magic asterisk of his own. He promises he will uphold one of his most famous campaign promises from 2020 — not raising taxes on anyone making less than \$400,000 — but never explains how he will pay for it.

Let's explain.

The Facts

[Running for president](#), Biden was emphatic: "Nobody making under 400,000 bucks would have their taxes raised. Period. Bingo," [he declared on May 22, 2020](#). To pay for major new social programs, Biden proposed trillions of dollars in tax increases on the very wealthy and corporations, but his pledge helped shield him from Republican attacks that he would raise taxes on the middle class.

That promise is now under pressure.

 **Follow Election 2024**

Follow

Whoever is elected president this year will face a fiscal crisis next year — tax cuts signed by [Donald Trump](#) in 2017 will expire, meaning everyone's taxes will go up sharply if Congress does not act.

Why would tax cuts expire? Because of an accounting gimmick. The revenue loss from tax cuts is measured over 10-year periods because of Senate rules, and Republicans wanted to pass more tax cuts than they could officially afford. So Trump and the GOP Congress enacted a tax cut that expired after just nine years so it would seem smaller than in reality.

Biden opposed the 2017 tax cut, so he has no problem with taxes on the wealthy going up. But letting the whole tax cut expire would violate his pledge to people making less than \$400,000.

"This was one of the most egregious and fiscally reckless budget decisions in modern history," [Biden's 2025 budget says](#). "The President, faced with this fiscally irresponsible legacy, will work with the Congress to address the 2025 expirations, and focus tax policy on rewarding work not wealth."

Among the principles the president listed to guide this debate is a commitment to handle the problem in a "fiscally responsible manner" by paying for "extending tax cuts for people earning less than \$400,000 with additional reforms to ensure that wealthy people and big corporations pay their fair share."

But the budget does not specify how Biden would do that. To fund proposals for social programs, the 2025 plan already has a bevy of tax increases on the wealthy and companies, including a billionaire wealth tax. It proposes imposing a top tax rate of 39.6 percent for people making more than \$400,000 and increasing a tax on investments for people making more than \$400,000.

Moreover, the cost of fulfilling this pledge is going to be expensive.

The White House has not produced a number but, using a [2023 Congressional Budget Office estimate](#) and a [2022 Tax Policy Center estimate](#) of the percentage of the tax cut that goes to the wealthy, we roughly calculate that at least \$1.7 trillion in new revenue over 10 years would be needed to make sure there are no tax hikes on people making less than \$400,000. (The math is complicated because the numbers change depending on the 10-year budget window and because it is unclear how many Americans have been pushed into the over-\$400,000 tax bracket in the past two years.)

To illustrate how Biden would pay for this, White House officials pointed to three tax increases that Biden has proposed in the past that are not in his budget. We will cite somewhat outdated 10-year revenue estimates, so the numbers are probably slightly higher now. They would:

- Impose an additional 5 percent tax rate above income of \$10 million, and then an additional 3 percent above income of \$25 million ([\\$190 billion](#))
- Limit itemized deductions for high-income taxpayers ([\\$350 billion](#))
- Roll back estate tax exemptions to 2009 parameters ([\\$250 billion](#))

That adds up to about \$800 billion — only halfway there.

White House officials insist that they can credibly claim the president's budget includes \$3 trillion in deficit reduction, despite the failure to identify ways to pay for the president's \$400,000 promise, because the budget says he is committed to making sure any fix is revenue neutral.

As a technical matter, inflation had partially eroded Biden's promise as wage increases have pushed more people into the \$400,000 tax bracket. A salary of \$333,000 in 2020 would be worth \$400,000 in today's dollars. The White House is sticking with \$400,000, saying it affects only the top 2 percent of taxpayers. (Other estimates suggest it could be as much as 5 percent). However, the budget would make the new top rate adjust each year with inflation.

"The Trump tax cuts added \$2 trillion to the debt with unpaid giveaways skewed to the wealthy and large corporations, and now Congressional Republicans are proposing to add another \$3 trillion to the debt by extending them," said White House spokesperson Michael Kikukawa. "President Biden's approach couldn't be more different. He is fighting to cut taxes for working families and the middle class — standing by his commitment to never raise taxes on households earning less than \$400,000 — while responsibly reducing the deficit by making the wealthy and large corporations pay their fair share."

The Bottom Line

As we said, a White House budget is mostly a messaging document. To pay for many popular programs and to claim \$3 trillion in deficit reduction, the budget is silent on how Biden would keep his promise not to raise taxes on people making less than \$400,000 in a revenue-neutral way. That may be smart politics, but it's incomplete budgeting, especially because the cost of keeping that pledge is nearly \$2 trillion over 10 years. If the president is reelected, he will struggle to meet that promise without giving up on other priorities.

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Secretary YELLEN. He has explicitly said that he will not agree to raise taxes for people making under \$400,000.

Mr. SMUCKER. So I think it is more important—

Secretary YELLEN. And that is not any proposal of his. He has not said—

Mr. SMUCKER. So I think it is—

Secretary YELLEN. He would allow everything to expire.

Mr. SMUCKER. It is more important to look at—

Secretary YELLEN. That is just wrong.

Mr. SMUCKER. I think it is more important to look at what he has proposed, rather than what he said. And very clearly, the \$3 trillion in revenue, or in reduction, what you are calling a reduction in debt, includes a significant amount coming from families who are earning under 400,000 per year.

Secretary YELLEN. Well, that will have to be paid for.

Chairman SMITH. Thank you.

Ms. Sánchez.

Ms. SANCHEZ. Thank you, Mr. Chairman.

And Secretary Yellen, it is always an honor to have you here. I want to thank you for your testimony and for taking the time to answer our questions today.

With you at the helm, Treasury has helped the Biden Administration rebuild and strengthen our economy for the benefit of American workers and families. Together we have made real progress in terms of lowering costs for American families, from childcare to health care to housing, not to mention creating 15 million jobs on President Biden's watch.

The President's latest budget shows that this Administration is committed to building out a fairer, more level playing field in our tax code. We need to recalibrate our nation's tax system to drive benefits towards working families who need the most, instead of the wealthy who benefitted for the most part, under the TCJA.

I want to hone in on a small but very powerful way that Treasury recently helped families navigate our tax system. This tax filing season the IRS launched a key cost-saving tool with Inflation Reduction Act funding. For the first time, certain eligible taxpayers could choose to file their returns online directly with the IRS for free. More than 33,000 Californians opted into that pilot program, and it is pretty clear that Americans are hungry for an efficient, free, and direct filing option with the IRS.

Because for a lot of Americans and a lot of my constituents, filing their taxes is confusing, it is frustrating, and it is time-consuming, and often times very expensive. Not everybody has the time or the disposable income to work with a paid tax preparer, and I think that all of our constituents can benefit greatly from a free and easy-to-use tool that helps them file accurate returns but, more importantly, make sure that they aren't leaving tax credits on the table.

Secretary Yellen, I understand that the initial Direct File pilot was limited in scope, and I can understand how, when you have got a pilot project, keeping it small and nimble would allow the IRS to carefully track uptake, as well as the participant feedback. What has Treasury been hearing from taxpayers who actually took the

opportunity to file their taxes online for free and directly with the IRS?

Secretary YELLEN. So what I can tell you today—we haven't completely analyzed the information—is that the pilot was very successful. There was increasing interest from taxpayers during the five-week interval it was available, and taxpayers shared that they found Direct File easy to use, completed the process in about an hour. And on average, taxpayers have been spending an average of 13 hours and \$270 preparing their taxes each year. So the preliminary evidence suggests that this has been a very successful experiment.

Ms. SANCHEZ. It warms my heart to hear that. Can you talk to how the Direct File can help families understand their eligibility for and their ability to claim certain tax credits like the Child Tax Credit or the Earned Income Tax Credit?

Secretary YELLEN. So I believe I have—you know, I have not been through the entire—I have seen a demonstration. But the program, I believe, walks people through those areas to make sure that they are alerted to it and understand their eligibility.

Ms. SANCHEZ. Yes, I know that often times people aren't even aware of certain tax advantages that they can claim, and the Direct File helps them to understand those.

I want to give you in the last minute that I have of my time an opportunity to respond to the—somebody talked about inflation and costs going up. And unfortunately, inflation is a real thing. But how does our inflation rate compare with that of most modernized countries around the world?

And can you talk to the fact that, if we allow certain provisions of the TCJA to expire but keep in place other provisions, how that is going to benefit working families?

Secretary YELLEN. Well, with respect to inflation, inflation has come down considerably. And the measure that the Federal Reserve focuses on most over the last 12 months ran at 2.7 percent.

But what is important to households, of course, they see that the prices of many goods they bought pre-pandemic are higher—not all, but some—is that their wages have gone up by more than that. So their purchasing power, their inflation-adjusted incomes are higher, not lower.

And for example, even this morning we saw new data come out on the employment cost index that measures compensation. And it was up in nominal terms and in inflation-adjusted terms it showed that, over the last year, compensation on average has increased just under a percentage point for most families. So people in—generally are better off in spite of the price increases.

But we know we have more work to do. And President Biden is very focused on areas where he can lower costs, whether it is health care premiums, household energy expenses that will come down as a—because of the Inflation Reduction Act, drug prices, and the like. And so this remains a concern to many households, and it is something that is a high priority, getting costs down further.

Ms. SANCHEZ. I thank you for your time.

I yield back.

Chairman SMITH. Mr. Hern.

Mr. HERN. Thank you, Mr. Chairman.

Madam Secretary, thank you for being here today.

Mr. Chairman, I would like to enter for the record an article from Tax Notes titled, "Gain and Little Pain from New Bermuda Corporate Tax."

Chairman SMITH. Without objection.

[The information follows:]

Global: Gain and Little Pain From New Bermuda Corporate Tax

By: Martin Sullivan

Contrary to intuition but entirely consistent with financial accounting principles, the enactment of the Bermuda corporate income tax in the waning days of 2023 increased the reported profits of more than a dozen multinationals. And when this new 15 percent tax takes effect in 2025, several exceptions, elections, and credits will be available to moderate the burden of the new tax.

Sunny Skies

About 700 miles off the coast of North Carolina is Bermuda, with less than one-tenth the population of Washington, D.C. Bermuda is a leading international financial center specializing in insurance, reinsurance, captive insurance, and issuance of insurance-linked securities (high-return bonds with a return on principal that depends on outcomes of insured events). Ranked by per capita income, Bermuda at \$118,775 in 2022 is among the world's top five jurisdictions.

Ranked by per capita income in 2022, Bermuda is among the world's top five jurisdictions.

Bermuda's government collects about \$1.2 billion annually in revenue. Today (and through 2024) there is no corporate income tax. In the past, the Bermuda Monetary Authority routinely issued companies a certificate of tax exemption under the Exempted Undertakings Tax Protection Act of 1966, promising no income tax would be due through 2035.

Bermuda taxes and fees paid by businesses (mostly payroll tax and import duties) are not "covered" taxes that would reduce OECD global anti-base-erosion minimum taxes imposed by other jurisdictions. To soak up GLOBE taxes on domestic income that otherwise might be collected by foreign jurisdictions, most other governments will (or intend to) use the OECD template for a qualified domestic minimum top-up tax (QDMTT) at a rate of 15 percent. (Most notable among jurisdictions with no plans to adopt pillar 2 taxes are the United States, China, and the Cayman Islands.)

Bermuda opted instead for its own version of a domestic corporate tax because "the QDMTT provisions provide less flexibility and do not provide an effective platform for the introduction of certain policy-driven design features which are common in many other countries" (Bermuda Ministry of Finance, "First Public Consultation" (Aug. 8, 2023)). The Bermuda corporate tax disregards the existence of previously issued tax assurance certificates.

ETA Begets a Deferred Tax Asset

One especially generous feature of the new Bermuda corporate income tax that will take effect in 2025 is that in-scope Bermuda entities — both Bermuda-headquartered companies and affiliates of multinationals in groups with more than €750 million of annual revenue — will by default have available to them an economic transition adjustment (ETA). Unless they opt out for another benefit (using up to five years of prior losses, discussed below), Bermuda entities at the end of 2023 mark up their intangible assets to their estimated market value as of September 30, 2023. Most of those assets have a low- or zero-tax basis, and under the new law the entities can, for tax purposes, amortize those assets over 10 years. The amount that can be deducted in a year is limited to 80 percent of the positive taxable income.

Hmmm. Does this seem familiar? Where else have we seen the establishment of a previously unrecognized intangible asset conveniently create a deferred tax asset in a jurisdiction where that asset can be amortized over 10 years or so, and where those deductions are not allowed to reduce taxable income by more than 80 percent? Answer: Ireland. In response to international pressure, Ireland phased out multinationals' ability to use the "Dutch sandwich." But in its place, multinationals were able to reduce 80 percent of their taxable income in Ireland in any one year with deductions for the amortization of capital allowances. Total deductions allowed over time are equal to the estimated value of intangibles transferred from stateless entities to Ireland. (Prior analysis: Tax Notes Federal, Jan. 31, 2022, p. 598.)

For in-scope Bermuda entities, the ETA could have two other big benefits.

For in-scope Bermuda entities, in addition to the direct effect of reducing Bermuda corporate income tax in 2025 and after, the ETA could have two other big benefits. First, under financial accounting rules, if the company judges that it seems more likely than not that in the future Bermuda profits will be sufficient to take advantage of those amortization deductions, it can book on its balance sheet in the year of enactment — 2023 — a new deferred tax asset equal to the estimated (undiscounted) future value of the benefit of those deductions. (If the deductions are not expected to be used, as several companies — such as Prudential Financial Inc., Abbvie Inc., and Metlife Inc. — reported about the Bermuda corporate tax in their most recent Form 10-K reports, the company would book an offsetting valuation allowance.)

Second, an in-scope Bermuda entity can generate a deferred tax asset (on its balance sheet) and a deferred tax benefit (for its income statement) with an opening tax loss carryforward, which is based on any losses generated after September 30, 2023. However, if the Bermuda entity elects out of using an ETA, its opening tax loss carryforward is the cumulative amount of losses (net of gains) incurred in the five fiscal years preceding the effective date (computed as if the Bermuda corporate tax had been in effect during those years). Given that insurance industry profits are highly unstable, this can be an attractive option.

The creation of the new deferred tax asset (on the balance sheet) also results in a deferred tax benefit that reduces total tax expense, and that in turn increases after-tax profit. Based on information reported by U.S.-based public companies in their Form 10-K reports, by foreign companies listed on U.S. exchanges in their Form 20-F reports or in their annual reports (if not traded on a U.S. exchange), the table lists 19 companies that recorded a deferred tax benefit in 2023 because of the enactment of the Bermuda corporate tax.

Even though it isn't much more than a quirky byproduct of the application of standard accounting rules, it is a welcome development — a "silver lining," some have called it — to companies that must care about maintaining after-tax profits reported to investors. (Kenneth Araullo, "A Silver Lining Following Bermuda's Tax Changes," *ReInsurance Business*, Mar. 18, 2024.) To its credit, Chubb Ltd. expressly downplayed the positive effects on profits resulting from the accounting treatment of the new Bermuda law: "We believe that excluding the impact of the one-time deferred tax benefit provides a better evaluation of our operating performance and enhances the understanding of the trends in the underlying business that may be obscured by this one-time item" (Jan. 30, 2024, Form 8-K report to the SEC).

Good Defense

Now here's the second benefit of the creation of a deferred tax asset with an ETA or an opening tax loss carryforward: Beginning in 2025 (in 2030 in some cases), when deductions for amortization are taken that reduce income taxes paid to the government of Bermuda, those deductions increase deferred tax expense (as they draw down the deferred tax asset created at the end of 2023). Under the general guidelines provided by the OECD for pillar 2, covered taxes (in the numerator of the GLOBE effective tax rate) include deferred tax expense. (This provision was included in the OECD guidance so that companies that paid low taxes in the first years of pillar 2 taxation because of loss carryovers are not unfairly subject to tax under the new regime.) So even though amortization deductions reduce corporate tax paid to Bermuda, they do not trigger minimum tax liability that could be imposed by other GLOBE-participating countries.

Other Special Rules

The new Bermuda law has other provisions that can provide additional relief, but the complexity of those provisions — more than 20 elections have interrelated effects — has caused many companies to report that they are still uncertain about the overall impact of the tax.

For the temporary relief to apply, the multinational group must be operating in no more than five jurisdictions outside Bermuda.

One important form of relief under the new Bermuda law (similar to that in the OECD's guidelines) is temporary exemption until 2030 from the new tax for companies with a limited international footprint. For this temporary relief to apply, the multinational group must be operating in no more than five jurisdictions outside Bermuda. Essent Group Ltd., Hamilton Insurance Group Ltd., and White Mountain Insurance Group Ltd. report that they believe they qualify for the exclusion.

Another relief provision in the new law (similar to the OECD rules) is an exemption for shipping company income. Norwegian Cruise Line Holdings Ltd., headquartered in Florida and incorporated in Bermuda, reports that it expects to qualify for that exemption.

Initially, the Bermuda government proposed as a general rule that non-Bermuda income taxes and other taxes collected in-lieu of an income tax imposed on Bermuda income would be creditable. Commenting on draft legislation released on November 15, 2023, Tax Notes International contributor Mindy Herzfeld observed that the proposed law "would flip the GLOBE ordering rule on its head by allowing U.S.-parented companies to first claim credit for GILTI taxes paid." (Prior analysis: Tax Notes Federal, Dec. 4, 2023, p. 1719.) However, under the final legislation enacted on December 27, 2023, taxes paid by a U.S. shareholder under U.S. global intangible low-taxed income rules are now no longer considered creditable foreign taxes. In place of creditability, the final legislation provides the temporary relief (for 2025 and 2026) that Bermuda income that is taxed under a controlled foreign corporation regime for U.S. tax purposes is not included in Bermuda taxable income.

Although it's inconsistent with most who have expressed views on the topic, some companies have suggested that the Bermuda corporate tax may not be a covered tax for pillar 2 purposes.

For example, Assured Guaranty Ltd. states, “The treatment of the Bermuda corporate income tax as a covered tax is subject to interpretation in other jurisdictions and therefore remains uncertain at this time. If the Bermuda corporate income tax is not regarded as a covered tax for the purposes of Pillar Two in other jurisdictions, this may have a material impact on the Company’s future tax expense.”

More to Come

The big gap — some would call it a loophole — in the OECD’s pillar.2 rules is that some substance-based tax credits would not reduce covered tax in the GLOBE tax calculation, so tax reductions from those credits would not trigger minimum tax liability. Like other low-tax jurisdictions adopting QDMTTs, Bermuda is emphasizing the future availability of the credits. A “robust package” (the words of Bermuda’s premier and minister of finance, David Burt) of qualifying credits is now being developed with input from industry leaders. The qualified refundable tax credits are expected to be enacted before the corporate tax takes effect in 2025. The credits are designed “to support Bermuda’s economic goals and maintain our global attractiveness as a Jurisdiction” and “will benefit Bermuda in key areas including infrastructure, education, healthcare, innovation, and housing.”

In his budget statement for the upcoming fiscal year, Burt announced that “the Government should expect to receive, on average, at least \$750 million in additional revenue each year; and that initial tax payments on account from the [corporate income tax] could commence by July 2025.” Considering the billions in profits that pass through Bermuda each year, that does not seem like a lot. (One academic study estimated that a QDMTT imposed by Bermuda — assuming there are no qualified refundable tax credits or other offsets from the government and no profit shifting out of Bermuda by multinationals — would raise close to \$10 billion (Mona Baraké, Paul-Emmanuel Chouc, Theresa Neef, and Gabriel Zucman, “Revenue Effects of the Global Minimum Tax Under Pillar Two,” 50 *Intertax* 689 (2022)).)

But the official revenue outlook is better for Bermuda than it is for fellow investment hub Singapore. On February 28 Minister for Finance Lawrence Wong told the Singaporean Parliament: “As I said in my budget statement, after taking into account these additional expenditures [including a refundable investment tax credit] that we are likely to incur, I do not expect the pillar 2 move to generate significant additional net revenues on a sustained basis.”

As reported in Bermuda’s local newspaper, Bermuda industry groups — including the Association of Bermuda Insurers and Reinsurers, the Association of Bermuda International Companies, the Bermuda Business Development Agency, the Bermuda Chamber of Commerce, and Bermuda International Long-Term Insurers and Reinsurers — expressed support for the government’s new budget and the new corporate income tax. David Hart, chief executive of Bermuda’s Business Development Agency, said, “We remain optimistic that Bermuda’s proposed corporate income tax, when implemented, will make Bermuda an even more attractive place to do business.” (“Business Groups Give Blessing to Government Budget,” *The Royal Gazette*, Feb. 25, 2024.)

Companies Reporting Increases in 2023 After-Tax Income Because of the Enactment of the Bermuda Corporation Income Tax

Corporation	Jurisdiction of Incorporation	Industry	Deferred Tax Asset = Increase in 2023 Earnings (millions)	Revenue (billions)	Net Income (billions)
Arch Capital Group Ltd.	Bermuda	Insurance	\$1,180	\$13.4	\$4.4
Assured Guarantee Ltd.	Bermuda	Insurance	\$189	\$1	\$0.5
Aspen Insurance Holdings Ltd.	Bermuda	Insurance	\$200	\$2.6	\$0.5
Apollo Global Management Inc.	Delaware	Investment advice	\$1,764	\$33.2	\$5
Axis Capital Holdings Ltd.	Bermuda	Insurance	\$13.3	\$5.6	\$0.4
Chubb Ltd.	Switzerland	Insurance	\$1,135	\$50	\$9
Everest Group Ltd.	Bermuda	Insurance	\$578	\$14.6	\$2.5
Enstar Group Ltd.	Bermuda	Insurance	\$205	\$1.4	\$1.1
Essent Group Ltd.	Bermuda	Insurance	\$2.7	\$1.1	\$0.7
Fidelis Insurance Holdings Ltd.	Bermuda	Insurance	\$90	\$3.6	\$2.1
FTAI Aviation	Cayman Islands	Leasing	\$72.2	\$1.2	\$0.2
Hamilton Insurance Group Ltd.	Bermuda	Insurance	\$35	\$1.5	\$0.3
Hiscox Ltd.	Bermuda	Insurance	\$150	\$2.6	\$0.5
PartnerRe Ltd.	Bermuda	Insurance	\$432	\$9.1	\$2.3
RenaissanceRE Holdings Ltd.	Bermuda	Insurance	\$593	\$9.1	\$2.6
Signet Jewelers Ltd.	Bermuda	Jewelry	\$263	\$7.2	\$0.8

Corporation	Jurisdiction of Incorporation	Industry	Deferred Tax Asset = Increase in 2023 Earnings (millions)	Revenue (billions)	Net Income (billions)
SiriusPoint Ltd.	Bermuda	Insurance	\$100.8	\$2.7	\$0.4
White Mountains Insurance Group Ltd.	New Hampshire	Insurance	\$68	\$2.2	\$0.5
Willis Towers Watson Public Ltd. Co.	Ireland	Insurance	\$10	\$9.5	\$1.1
<i>Source: Company annual reports.</i>					

Mr. HERN. Thank you.

Madam Secretary, as you might be aware, Bermuda is introducing its new corporate income tax that will take effect in 2025. Bermuda entities will be able to mark up their intangible assets to their estimated market value, and under the new law they can amortize those assets over 10 years for tax purposes.

Madam Secretary, this creation of a new deferred tax asset also results in the deferred tax expense. As you know, under general guidelines provided by the OECD for Pillar Two that you negotiated, deferred tax expense or these amortized deductions will not trigger minimum tax liability that could be imposed by other globe-participating countries.

Bermuda has no intention of giving up its ability to attract business through the tax code. Other countries are adopting similar measures to maintain their status as an attractive jurisdiction at the expense of United States multi-nationals. We know about Singapore. We know about Ireland, the things they are doing to maintain their ability to use their tax code to lure companies there.

Madam Secretary, are you concerned about the fact that Pillar Two is creating a new tax subsidy race where countries enact Pillar Two taxes, but offset the higher tax costs with tax subsidies in the form of qualified refundable tax credits and other incentives like what Bermuda is doing?

Secretary YELLEN. Well, the idea of Pillar Two is to level the playing field. And countries that refuse to raise their tax, corporate tax, rate up to the minimum, countries that participate and enact the minimum can, in effect, tax companies in tax havens that haven't done it.

Mr. HERN. But Madam—

Secretary YELLEN. You have cited an example. I am not aware that this is something that is broad-based, but if it is it would certainly concern me, and it is something that I would be prepared to look into.

Mr. HERN. Well, Madam Secretary, we have all seen what Ireland has said about putting a cap on recurring revenues. We have seen what Singapore said in refundable tax credits. We have seen what China does in direct tax payments or direct access—or cash payments to their companies to be able to offset the taxable income so that they, in effect, from the look at it, that the minimum tax level would be hit. But companies in those countries are getting subsidies through direct credits that offset that and take it backwards, where ours aren't direct. Ours are not refundable. We have to actually earn income to be able to utilize those.

Question two: Is this Administration concerned that Pillar Two incentivizes subsidy warfare that puts our adversaries like China at a competitive advantage?

Secretary YELLEN. It would concern me if it has incented that, but I am not aware that that is broad based at this point.

And in our case, many of our tax credits such as the green tax credits, the LIHTC credit, are being treated as refundable. As I have emphasized previously, we are working to make sure that the R&D tax credit also will be something that firms can—

Mr. HERN. But—

Secretary YELLEN [continuing]. Benefit from.

Mr. HERN. But Madam Secretary, I think you just validated that countries have the ability to make certain credits refundable to offset the minimum tax that other countries or OECD can lie claim to. China can do it. I think that you are going there evidences the fact that they are not always transparent in what they do, since all of their companies are basically owned by the CCP.

Madam Secretary, I have got a longer question here, but it pertains to the same thing. I think there is a lot of work to be done. As you know, the committee, the Republicans on the committee, went to the OECD and expressed our concern and made it very clear that Pillar Two is not going to take place under a Republican-led Ways and Means Committee, and we are not going to give away our tax dollars. In fact, it is said time and time again about how many tax dollars, U.S. taxpayer dollars would go around the world, upwards of 200 billion. I know you said that was JCT's outward look.

But I think it is important for everyone to know—and you know this to be certain—corporations don't pay taxes. The people that work for the corporations, the consumers of the products of those corporations, and the owners of those corporations pay the taxes to increase pricing for whatever the commodities are. In fact, Forbes, Brookings, Tax Foundation, Cato, and many, many others have said that consumers pay 31 percent of the new taxes, workers pay 38 percent of the taxes. All of those people, for the most part, make less than \$400,000 a year. So they are going—about 70 percent of the tax increase will be paid by people making less than \$400,000 a year, some portion of that.

So I think it is disingenuous, as my colleague from Pennsylvania said, to say that no one is going to pay a single cent, as outlined in the White House's conversation about policy, going forward. It is just disingenuous. It is not factual, and it is not honest with the American people.

One other thing that you said is that the labor participation rate was better today than it was pre-COVID. I know you—

Secretary YELLEN. For adults.

Mr. HERN. I know you selectively picked an area.

Secretary YELLEN. For adults.

Mr. HERN. It was 63.3 percent on March 2020. Today it is 62.7, overall workforce.

Secretary YELLEN. I said—

Mr. HERN. When you don't have the luxury as an employer, as I did for 35 years, saying I am only going to hire people working—you have got to be 25 years old or 54 years old.

Secretary YELLEN. We have an aging population. And as people retire, we know that labor force participation overall will decline over time.

Mr. HERN. Mr. Chair, I yield back.

Chairman SMITH. Thank you.

[Pause.]

Chairman SMITH. You are good?

Ms. CHU. Yes.

Chairman SMITH. Ms. Chu.

Ms. CHU. Secretary Yellen, I heard your comments earlier about the success of the Direct File pilot program, and I was so glad to hear why it was a success.

And I especially want to have you address some things that Republicans and the private tax prep industry are saying. They are attacking the numbers of the filers, 140,000 filers, to show that the pilot was a waste of money because there are 19 million who were eligible and that this was unnecessary. And yet, what I see is that there were a lot of obstacles to the program that the IRS was able to overcome. And actually, I would have called it a resounding success.

So can you tell us why it was considered a resounding success, considering the obstacles that there were?

And what considerations will go into the decision to extend the pilot?

Secretary YELLEN. Well, let me say that this was an experiment, and it was deliberately introduced in a phased way, starting at small scale. It was only available to most filers for five weeks in a subset of states that decided to participate. So for that amount of time 140,000 people using it and expressing positive reactions to the experience I would certainly call a success.

Additionally, because it is an experiment, only relatively simple tax situations could use it. If an individual went on and it turned out they had the kind of income that wasn't incorporated into the first iteration of this program, they were directed to do something else.

But this saved a lot of taxpayers, even in this first stage, a lot of money that they normally spend and a lot of time. And there was customer service available for anybody that needed it. And so overall, I believe we will see that the experience was a very positive one.

Ms. CHU. So it was deliberately at a number that could ensure its success, actually.

Secretary YELLEN. That is right, to start in a phased way.

Ms. CHU. Yes, and I want to also express appreciation because you also made it available in both English and Spanish. My district in the San Gabriel Valley includes many limited English proficient taxpayers who speak not only Spanish, but also Tagalog, Korean, Chinese, Japanese, and Vietnamese.

If the Treasury and IRS decide to renew the Direct File pilot, can you talk about how it could reach more taxpayers by expanding to possibly even more languages?

Secretary YELLEN. Well, I am sure that would be something that would be considered over time. There are other things that could be incorporated in addition to expanding the kinds of income and deductions that are considered.

You know, eventually, the information that the IRS gets on W-2s and other information reporting could be used to pre-populate returns, making it even easier. But these are things in the future if it is decided to continue with free file.

Ms. CHU. Secretary Yellen, also I heard you talk earlier about the proposals that the Administration has to end tax breaks for the wealthy, and instead restore tax credits for workers and families like the Expanded Child Tax Credit and the Earned Income Tax

Credit of the American Rescue Plan. We know about the powerful effects of these tax credits on reducing poverty, but can you talk about how these programs will impact the American economy and improve things for everybody?

Secretary YELLEN. Well, I mean, a very good example would be the Child Tax Credit, which in 2021 lifted 5.3 million people, including 2.9 million children, out of poverty. We saw a 46 percent decline in child poverty in 2021. And this is not only beneficial to the children and their parents in the short term, but we know from many studies that when poverty is reduced for children, it rounds to their benefit over the remainder of their lives.

Ms. CHU. Thank you.

I yield back.

Chairman SMITH. Thank you. There are several votes on the floor. The committee stands in recess until immediately after the conclusion of this vote series.

[Recess.]

Chairman SMITH. The hearing will come to order. Mr. Carey is recognized.

Mr. CAREY. Thank you, Mr. Chairman.

Secretary Yellen, as you know, low carbon hydrogen can reduce carbon emissions and create much-needed American jobs. Ohio is well positioned to lead on hydrogen, given the state's proximity to the end markets, as well as its access to low-cost, abundant, and diverse energy feedstocks. I believe Ohio can be a leader in hydrogen production from natural gas, with carbon capture and sequestration, sometimes known as blue hydrogen. Our state has abundant storage capacity, carbon capture emissions, and unparalleled access to low-cost natural gas.

But most importantly, we know hydrogen made with natural gas while using carbon capture and sequestration can produce very low emissions. Unfortunately, the Administration's recently proposed regulations for hydrogen production, tax credit 45V, could halt several of the proposed Ohio projects.

Last fall, DoE selected the Appalachian Regional Clean Hydrogen Hub centered around the Ohio River Valley, an area that I know very well, as the official hydrogen hub. Natural gas will play a major role in the overwhelming majority of these projects. This hub alone would create up to 18,000 construction jobs, with about 3,000 of those jobs being permanent. Without a workable, flexible 45V guidance, many of the projects within the hub will be uneconomical.

Clear, inclusive tax guidance can help increase much-needed economic certainty that there will be adequate supply of hydrogen to meet the needs of Ohio's industries that are already making investments to use hydrogen in their businesses. I recommend that the Treasury permit taxpayers to use actual EPA-verified greenhouse gas emissions data to calculate an accurate tax credit value, rather than being forced to use a baseless national average, as laid out in the proposed regulations.

Companies investing in lower methane intensity natural gas to produce hydrogen should be able to demonstrate the low-carbon intensity of the produced hydrogen with EPA-verified data, then use the data to calculate the corresponding tax credit value. The pro-

posal of the tax credit and the intent of Congress is to drive the incremental and continual reductions in the carbon intensity of hydrogen. Without this change to the proposed rule to permit hydrogen producers to prove the actual carbon intensity of their hydrogen, the 45V tax credit will drastically be—mischaracterize carbon emissions' intensity, which will stifle the development of low carbon hydrogen products and impede the Administration's goal at reducing the overall emissions.

And I know this is probably not something that a lot of people talk about, but given the fact that Ohio does have the aquifers to hold carbon, it is something that is very important to our state. I only have a minute and 30 seconds. If you have a second, I wouldn't mind your response.

Secretary YELLEN. Well, the hydrogen provisions of IRA are very important, and we have worked hard to put out a notice of proposed rulemaking that will provide some clarity and flexibility to let projects advance with the appropriate environmental safeguards.

We have worked very closely with the Department of Energy and with EPA on the proposed regs, given their technical expertise, but this is very complex, and it requires evaluating lifecycle emissions. We have received many, many comments—I believe over 40,000 comments—on the proposed rule.

I appreciate your comments, and we promise that we are sifting through them and need to reconsider what the appropriate response is. So what I can say is that we will take this input seriously as we work to revise the regulations.

Mr. CAREY. Well, I do appreciate that. I just want to say, again, with the developments that we have in place, Ohio looks to get 18,000 construction jobs, 3,000 permanent jobs. This could be a very big, very big economic factor for the State of Ohio.

With that, Mr. Chairman, I yield back.

Chairman SMITH. Thank you.

Ms. DelBene.

Ms. DELBENE. Thank you, Mr. Chairman.

And thank you, Madam Secretary, for taking the time to be with us here today. And thank you for your attention to the needs of working families and struggling Americans, and for the work that you do to keep America globally competitive.

Secretary YELLEN. Thank you.

Ms. DELBENE. Madam Secretary, I first want to give you a chance to clarify the Administration's position on the Child Tax Credit, something I am a big supporter of. I know that some assertions were made, and you didn't have a chance to respond. So I want to give you a chance to respond.

Secretary YELLEN. The President is supportive of the Child Tax Credit, and he has proposed to extend it in his 2025 budget, and has been supportive of Wyden and Smith also, the provisions on the Child Tax Credit that are included there.

Obviously, it has made a tremendous difference when it was in effect in 2021, reduced child poverty by 46 percent, and is very important, and an important provision that really helps working families.

Ms. DELBENE. Absolutely. And I would love to see us put that in place and make that permanent. So that is work we are going to continue to focus on.

The Inflation Reduction Act also included a historic \$80 billion investment in the IRS, 20 billion which was rescinded by my Republican colleagues. But one of the key needs addressed by these funds was modernizing the agency's core technology infrastructure.

As this technology is updated, I wondered if you could speak about how emerging technologies like artificial intelligence are being integrated into the IRS's work to provide services to taxpayers and to enforce tax laws.

And how is the IRS addressing data privacy and security concerns inherent with such technologies?

Secretary YELLEN. So the IRS certainly has already begun to use AI in its work. I am not an expert on this, but I know that they see great potential in terms, on the enforcement side, in being able to sift through tax returns of high-income filers and complex partnerships and corporations, and to identify which ones would be good candidates for audits and trying to uncover fraud and close the tax gap.

You know, Treasury has a governance process where we are employing AI increasingly in Treasury's work, and we have put in place oversight and a governance process around that to make sure that it is used responsibly in accordance with the President's executive order.

Ms. DELBENE. Also, under your leadership, Treasury recently closed a loophole in our Russian seafood ban that previously allowed fish caught in Russia to still get to the U.S. if processing occurred in a third country like China. The ban is working, but unless our allies act in concert, American seafood will remain at a competitive disadvantage to Russian seafood in foreign markets.

Madam Secretary, I wondered how can Treasury push our allies, who are also large seafood importers, including Japan, Canada, the EU, and the UK, to cut off seafood trade with Russia?

Secretary YELLEN. So I must admit I am not intimately knowledgeable in what we are doing on this particular aspect of sanctions.

Ms. DELBENE. Okay.

Secretary YELLEN. But we are constantly working with our allies to try to coordinate our sanctions so that they are effective.

Ms. DELBENE. And then one I know you will have—and I probably won't give you enough time on this—but I wondered if you could talk about how suggesting the U.S. will never implement Pillar Two makes it more difficult to get the changes that we would like to see.

Secretary YELLEN. In—

Ms. DELBENE. Pillar Two of the OECD.

Secretary YELLEN. To see the changes, how does it make it more difficult to—

Ms. DELBENE. About how, when folks are suggesting that we are never going to implement Pillar Two, how that makes it more difficult for us to get the changes that we would like to see.

Secretary YELLEN. Well, this was a global agreement. The United States led the push on this, and we have argued since day

one that Pillar Two is something that is good for the entire world. We have pushed our allies now on the order of 40 countries have adopted it, most major countries, and I think they see it as a failure on our part not to be willing to adopt it ourselves. And so it does undermine our ability to exhibit leadership with our allies.

Ms. DELBENE. Thank you. My time has expired. Thank you, Madam Secretary.

I yield back, Mr. Chairman.

Chairman SMITH. Ms. Malliotakis.

Ms. MALLIOTAKIS. Thank you very much for being here. I am proud to represent Staten Island and Brooklyn, where you are from, and—

Secretary YELLEN. Thank you.

Ms. MALLIOTAKIS [continuing]. Fort Hamilton High School says hello.

Secretary YELLEN. Thank you.

Ms. MALLIOTAKIS. And I wanted to speak with you specifically about fentanyl and the involvement of the Communist Chinese Party. I know you recently returned from a trip from fentanyl (sic). You specifically talked about the money laundering that is involved. We know that Communist China is subsidizing the production of these fentanyl analogues that are now illegal in the United States and in China, but yet they are exporting it, killing, as you know, 100,000 Americans annually. A lot of it is going through the drug cartels in Mexico, in particular when they are subsidizing the production of this fentanyl in China. NPP and ANPP are two fentanyl precursors that we know specifically the Mexican drug cartels are using.

So according to the Congressional Research Service, U.S.-destined illicit fentanyl appears to be produced clandestinely in Mexico using these chemical precursors from China.

Earlier this month you reported on your trip that you were creating a joint Treasury-People's Bank of China cooperation and exchange on money laundering. So I just wanted to know where this group is at, what you think we will be able to derive from this to help save these American lives that are being lost, sadly, because of this interaction between the CCP and the Mexican drug cartels.

Secretary YELLEN. So I think fentanyl is a critical issue, as you have indicated, and Treasury is doing everything that we can to stem the flow of precursors from China to Mexico and the illegal sale of fentanyl from Mexico into the United States. I have also visited Mexico to discuss the fentanyl issue and to enhance our cooperation with them.

In the case of China, President Biden and President Xi, when they met—I guess it was in November in Woodside—agreed to jointly tackle fentanyl, which was a very good development. Meetings have been taking place. As you noted, in my recent trip—I guess it was two weeks ago—to China, we agreed to establish a special work—sort of dialogue or work plan around illicit finance. We have had one meeting so far that has been devoted to that topic, and fentanyl certainly is one of the key issues, although we are looking more broadly at illicit finance beyond fentanyl. But China has agreed to cooperate with us to try to stem the sale of

these precursors into Mexico and other places, and this is an area of cooperation.

Ms. MALLIOTAKIS. So it is your understanding that these money laundering organizations in the PRC are acting outside of the CCP's control?

Secretary YELLEN. I think so. It is not my understanding that the CCP is positively directing this activity, but that it is taking place among Chinese firms. And we need their cooperation to clamp down on those firms. We have sanctioned some, but there are many smaller firms in China that I believe are involved in producing these precursors and other equipment that is needed.

Ms. MALLIOTAKIS. The U.S. Department of Treasury and the Office of Foreign Assets Control has so far sanctioned more than 65 mainland China or Hong Kong-based persons for illicit fentanyl trafficking. And we also seen the DoJ take some action indicting three of the PRC-based companies. So I am glad to see that we are having some action taken.

These—any of these firms—again, everything in China obviously has the government's involvement in it. So my concern is more that the manufacturers of this fentanyl are being subsidized by the government. They obviously control the banks in China. And then, on top of it, these PRC-based companies. So I am just wondering how much we can trust them as partners. I am hoping that you are making some progress in that.

But the reality is that, you know, we are seeing this increase, not decrease. More Americans are dying as a result of this fentanyl that is streaming from the PRC to the Mexican cartel. Part of it is because of our open southern border, thanks to the President's 60-plus policy changes when he came in. So I just hope that you will work diligently, and I trust that you are, to really try to hold China accountable for this type of activity that we are seeing that are killing so many Americans.

Secretary YELLEN. It is a real American tragedy, and we will do everything and are doing everything we can to stem the flow of these drugs into our country.

Ms. MALLIOTAKIS. Thank you very much.

Chairman SMITH. Thank you.

Ms. Sewell.

Ms. SEWELL. Thank you, Mr. Chairman.

And Secretary, Madam Secretary, welcome again to our committee. I want to talk to you about equity and the President's charge to his cabinet at the very beginning of his Administration to really, really try to level the playing field and have equity be one of the hallmarks of that.

And I had an opportunity to sit with you. I think we had breakfast together. During the last Congress Congressman Richie Neal put together a racial equity initiative within Ways and Means, and had a chance to talk to you about some of the things that you were thinking about doing in terms of equity.

The budget is truly a reflection of what we value. We spend money on those things that we value. I want to commend this Administration and yourself for including in this budget expanding the Earned Income Tax Credit, the Child Tax Credit, the Low-Income Housing Tax Credit. I was a bond lawyer before I was a

Member of Congress, and new market tax credits are a way to really help depressed and distressed communities.

Can you talk a little bit about how the Earned Income Tax Credit and the Low-Income Housing Tax Credit will seek to level the playing field and our equity initiatives within Treasury, frankly?

Secretary YELLEN. Thank you. I think all of the initiatives that you mentioned, the New Markets Tax Credit, which we are proposing to make—

Ms. SEWELL. Permanent.

Secretary YELLEN [continuing]. Permanent, and also add a track that would be particularly focused on the most distressed communities, the Earned Income Tax Credit would be extended to single individuals with low incomes. It was done in the ARP.

Ms. SEWELL. Yes.

Secretary YELLEN. And this would make that permanent.

Of course, the Child Tax Credit has been critically—when it was expanded in 2021, critically important in reducing child poverty, reduced it by 46 percent. And—

Ms. SEWELL. Amazing.

Secretary YELLEN. Yes.

Ms. SEWELL. And so that in the fiscal year 2025 budget, that you would actually make permanent the Earned Income Tax Credit—and some of those are very, very important.

Secretary YELLEN. Very—

Ms. SEWELL. I noticed also that the President's budget provides a new mortgage relief credit. Can you talk a little bit about what that one is?

Secretary YELLEN. Well, home ownership for people who don't already own homes, first-time buyers, is almost prohibitively expensive.

First of all, mortgage rates have been so low for so long that it has created a kind of lock-in across much of the country, where people don't want to sell their homes to buy new ones because they will lose the benefit of the low mortgage rates they have locked in.

And then, with house prices having gone up, and now with much higher interest in mortgage rates, it is almost impossible for first-time buyers.

So the President has proposed a pair of tax credits. One would go—\$10,000, I believe—to purchases of new homes, and the other would go to individuals who are willing to sell their homes to try to get rid of some of that lock-in.

But we know that affordable housing, and especially starter homes, is an area where we really need to do a lot to increase availability.

Ms. SEWELL. Increase availability and also access, as well as making sure that we are leveling the playing field so that all Americans have an opportunity to live the American dream.

Secretary YELLEN. Yes.

Ms. SEWELL. Going back to the New Market Tax Credits, I represent my home district, Alabama's 7th district, and we have utilized New Market Tax Credits to help underserved urban but also rural parts of my district to actually—we are beneficiaries of this. As you know, New Market Tax Credits really let cities and counties

and non-profits to give an opportunity to really help a distressed area.

Can you talk a little bit about why that permanency with New Market Tax Credits is so critical?

Secretary YELLEN. I think it—because this is intended to generate private investment and is very successful in doing it, knowing that the program will be there over time, I think, generates much more interest in the part of the private sector.

Ms. SEWELL. And more certainty, yes.

Secretary YELLEN. Right.

Ms. SEWELL. Absolutely. Thank you so much.

I yield back the balance of my time.

Chairman SMITH. Mrs. Miller.

Mrs. MILLER. Thank you, Chairman Smith and Ranking Member Neal.

And welcome here today, Secretary Yellen. I am going to be on a little different track than my friend from Alabama. I am deeply concerned about many of the actions that the Treasury Department and President Biden's Administration are taking.

Unfortunately, every American is feeling the constant pinch of inflation, higher interest rates, and lower purchasing power. Despite this, the Treasury and the IRS appear to be only trying to make our constituents' lives worse instead of better. For example, the IRS has continued to illegally delay the implementation of the Democrats draconian 1099-K threshold. The Treasury Department has issued weak foreign entity of concern definitions to that which fail to protect American tax dollars from flowing to Chinese companies.

Guidance coming from the Treasury Department on energy tax incentives are blocking traditional energy communities from participating in the future energy economy and leaving them behind. You have led an unprecedented attack on American taxpayer privacy by overseeing the expansion of IRS snooping, and yet are failing to crack down on the leaks of sensitive taxpayer documents.

Furthermore, the IRS has wasted millions of taxpayer dollars on its unauthorized Direct File program. The Biden Administration has shockingly announced its plan to raise taxes by over \$7 trillion next year. You said last month under oath that there is no plan to protect middle-class taxpayers from these planned increases.

On the world stage we have surrendered the U.S. tax base to unelected global bureaucrats at the OECD and failed to protect the American tax system from what I think of as a heinous international interference.

On every front the American taxpayer loses, our nation becomes weaker, and our global adversaries are rewarded and emboldened.

Secretary Yellen, I am deeply concerned about our domestic industry's reliance on Chinese technologies and investments. As the recently appointed chairwoman of the supply chain's Tax Team, I look forward to working with my colleagues to improve upon the broken IRA's energy credits, protecting a competitive corporate rate, and ensuring that the United States is the best place to invest as it was under President Trump's historic tax cuts.

I have introduced two bills, the Protecting American Advanced Manufacturing Act and the End Chinese Dominance of Electric Ve-

hicles Act, to improve on the foreign entity of concern definitions for the 45X and the 30D tax credits, respectively. The current agreements establish a dangerous precedent that will take the U.S. decades to reverse by creating a future where our automotive and other industries are heavily reliant on foreign technologies. Without immediate passage of both of my bills, Chinese entities will receive billions of American tax dollars every single year.

Secretary Yellen, yes or no, does the Biden Administration support taxpayer dollars funding Chinese entities?

Secretary YELLEN. Well, when it comes to electric vehicles, the IRA, which obviously the Administration supports, has foreign entity of concern restrictions coming into effect this year and next, which will severely curtail—almost prevent entirely—participation of Chinese firms in producing components or minerals or processing—

Mrs. MILLER. That is not yes or no.

Secretary YELLEN [continuing]. That go into batteries.

Mrs. MILLER. That is not—

Secretary YELLEN. So that is a very significant restriction that will protect our supply chain.

With respect to 45X, that is a credit that Congress directed to go to any company that undertakes certain advanced manufacturing—

Mrs. MILLER. Reclaiming my time—

Secretary YELLEN [continuing]. In the United States.

Mrs. MILLER [continuing]. By allowing these Chinese companies to maintain control of the technologies, the intellectual property, and the supply chains, all the while receiving American taxpayer subsidies, how will this encourage U.S. companies to develop the technologies to become less dependent upon China and our adversaries?

It doesn't. Does the Biden Administration share any of my concern that China is using various IRA credits to deepen its influence on our domestic manufacturing industries?

Secretary YELLEN. The United States is doing everything we can in Treasury in implementing the IRA to strengthen our supply chains and make them less vulnerable to China.

Mrs. MILLER. Well, I continue to remain skeptical on the environmental and economic benefits behind your decision-making, and I do urge swift passage of my bills to further protect the United States manufacturing.

And I yield back my time.

Mr. SMUCKER [presiding]. Ms. Moore.

Ms. MOORE of Wisconsin. Thank you, Mr. Chairman.

And of course, Secretary Yellen, it is always good to be in your presence with your just wise experience. This committee is really blessed. I want to ask you a couple of questions related to domestic violence, sexual violence.

The 2013 amendments to the Violence Against Women Reauthorization Act, which I had the privilege and the opportunity to lead, really made some changes to prohibit housing providers who have used the Low-Income Housing Tax Credit from using domestic violence, dating violence, or sexual assault and stalking as grounds for

evicting the victim, or denying subsidies or admissions due to an abuser's act.

The IRS, of course, is not just the administrator of the housing tax credits, it has a duty to ensure that the Low-Income Housing Tax Credit program's compliance is with VAWA.

I think we have had some informal communication with the Treasury Department in this past decade where the Treasury has disavowed any responsibility to set out some sort of guidance on this. And in fact, in 10 years we have not seen that done. And so, I was wondering—and I am joining Ms. Tenney. She and I are writing you a letter to try to find out what the status of why you don't feel that you need to comply or, if you do, if you will.

Madam Secretary.

Secretary YELLEN. Well, first, let me thank you for your work on this very important initiative, which I think is critically important for domestic violence victims, and the reauthorization explicitly extended VAWA's protections to applicants and tenants in LIHTC properties.

Now, if there is specific issues or guidance that you think is necessary, I would like to put you or your staff in touch with people at the Treasury or/and IRS, and we would be glad to work with you.

Ms. MOORE of Wisconsin. Well, thank you with that, because the national housing authorities have put together some sort of guidance that seems to be working, and we will share that with you.

Mr. Smucker and I, as an extension of this discussion, I want to talk about something we think is extraordinary, and that is judgments that are made for victims of sexual assault. If you are a victim of sexual assault and you get a settlement or an award, you will be able to get a settlement and not pay taxes on it if you can prove that there is some physical harm.

But as an example, I mean, if you were put in a situation where you were forced to strip naked and parade, you know, through a gang of perpetrators, and no one penetrated you, you might get a judgment out of that, but you would have to pay taxes on it. And we don't think that that is fair.

And so we are looking, Mr. Smucker and I, to changing the law so that there is a presumption of a physical abuse that would meet the requirements for some kind of income exclusion. And so we are hoping that you will see this in the positive light that we see it.

Secretary YELLEN. We would be glad to work with you on that.

Ms. MOORE of Wisconsin. I have one question with my remaining time, just to sort of understand what your stance is on minerals. You just had a previous discussion with Mrs. Miller that I thought was very compelling, and she talked about China, our subsidizing China in minerals. And I guess I didn't really understand that discussion.

What I am concerned about is that there is a tremendous cost to extract and process critical minerals domestically. And by denying the monies to this domestic activity, are we in fact subsidizing or enabling minerals from other places?

Secretary YELLEN. Well, I mean, we are making it really all but impossible to get the \$7,500 subsidy if the minerals they are proc-

essing take place in China, and the IRA contains incentives to produce and process these either domestically or among friends—

Ms. MOORE of Wisconsin. Well, Madam Secretary, why aren't we allowing the credit—

Mr. SMUCKER. The gentlewoman's time has expired.

Ms. MOORE of Wisconsin. Okay. Why aren't we allowing the credit when it is produced domestically? Could we do that and still prevent outsiders?

Secretary YELLEN. The credit is available when the minerals are processed domestically or in countries with whom we have a free trade agreement.

Mr. SMUCKER. The gentlewoman's time has expired. Ms. Tenney is recognized for five minutes.

Ms. TENNEY. Thank you, Mr. Chairman.

And also, thank you to Secretary Yellen for your service and for being here today and this long session today. I just wanted to kind of go back to a couple of things that Congresswoman Sewell said, and go back to the New Markets Tax Credit issue, and the authority which ends in 2025. And we teamed up and wrote a note, a letter to you, about six months ago indicating why it has taken so long to get this underway, why we can't do what the Treasury has done in the past, doing this as a lump-sum program when it was authorized in 2015 and 2016.

And as you know, as we are coming down to a deadline, the deadline is the end of 2025, and obviously, this is an urgent issue so we can make sure that we get the monies directed to these needy communities we have. Representative Sewell and others on the committee are also very concerned about this, but also to get to other parts of my district. I have a very rural, sprawling district in upstate New York, and this New Markets Tax Credit has been a help.

We did get a response from Acting Assistant Secretary Corey Tellez, but it was six months later, and really just said, "We are working diligently." So it wasn't, you know, a progress report of any substance. And we are just wondering if there is any way you can give us an update today.

Where are we with this? Can we get it done in a way that we did in 2015 and 2016 to get these credits expedited as time is running out on this program, and very much needed program, in a bipartisan way?

Secretary YELLEN. So you are talking about previous credits that would qualify this year?

Ms. TENNEY. No, we are talking about the current credits that haven't been—you have indicated that some of them, in the letter that we received in February in response to our September 2023 letter, you have indicated that you have made a number of awards, but the program isn't completed and there are a lot of rewards outstanding. And we have people out all across the country waiting to be able to get approved through Treasury.

What is the holdup? Can we get an expedited—I mean, we really just want a simple answer. Can we get your attention on that, and make sure this comes out?

Secretary YELLEN. I will look into it. I am assuming that we will award these, but I don't know the timetable when we will—

Ms. TENNEY. Right. As you know, construction projects, they are very—

Secretary YELLEN. We will try to get back to you.

Ms. TENNEY. Thank you. They are very expensive, very—and we want to—you know, these investments are made, and then the credits aren't out, and we have got people willing to come into our rural and needy communities to invest, and we just want to make sure that they have the certainty that they need to do that.

The second question I have for you—and I just wanted to check on Treasury's progress—as you know, these horrific attacks on Israel by Hamas on October 7, we have seen a dangerous rise in anti-Semitism across the country. Notably at universities, we are seeing this play out every day today, including my own home state of New York, even upstate New York, where I have nearby Cornell University, Syracuse University, and many other campuses there. We are seeing these anti-Semitic demonstrations, support of terrorist groups like Hamas, and there are even reports indicating that numerous U.S. charities are suspected of funneling this money to Hamas, or from Hamas to various ties to organizations that we have designated as financiers of terrorism by the Treasury Department.

I just wanted to know where we are with Treasury today, and what are we doing to make sure that we are cracking down on Iran and other groups with sanctions, with support for cutting down their ability to fund these groups that we think are coming here.

And I just wanted to just say thank you to Chairman Smith. Earlier this year we did do—or earlier, I think, or later last year we did a hearing on what is happening on our campuses, and a deep dive into where this money is coming from. A lot of it looks like it is coming from Iran, coming through, you know, not-for-profits, whether they are 501(c)(3)s, (4)s, and using our IRS structure, but also Treasury may be backing off on sanctions on Iran. And I want to know where we are with that today.

And if you could, quickly comment on are we going to continue to press Iran in its ability to be a state sponsor of these things?

Secretary YELLEN. Well, it is really at the absolute top of our agenda to crack down on Hamas and Iran. We have taken a large number of actions. I would be glad to detail them all out for you, but—

Ms. TENNEY. Can you just give me a—

Secretary YELLEN [continuing]. Both against Iran and Hamas—

Ms. TENNEY. Can you—yes, can I just reclaim my time? Just, like, clarify my question, if you would, please. How are we increasing sanctions on Iran again now, as we see what is happening, and we know that there has got to be some kind of linkage? Are we cracking down on sanctions on Iran right now? Is that something Treasury is continuing to press?

Secretary YELLEN. Absolutely. We took a set of sanctions—I believe it was just last week—to crack down on oil sales by Iran's military to China. We have cracked down on their provision of UAVs that are going to Ukraine and other places and being used by terrorist groups against Israel.

We have taken numerous, numerous actions to go after Hamas financing, using every channel we are aware of, and we are working jointly with our allies to do this.

Ms. TENNEY. Thank you. Well, we appreciate that. My time has expired, but we really need to crack down and get the sanctions in place to really put a dent

Secretary YELLEN. We are——

Ms. TENNEY. Into Iran's ability to fund this. We know that this is what is probably happening, and where the money is probably coming from, somehow using the channels of our good-intentioned, not-for-profit laws. So——

Mr. SMUCKER. The gentlewoman's time has expired.

Ms. TENNEY [continuing]. I appreciate that. Thank you.

Mr. SMUCKER. Mr. Kustoff is recognized for five minutes.

Mr. KUSTOFF. Thank you, Mr. Chairman.

Thank you, Madam Secretary, for appearing today. I am over here to your left. If I could, Madam Secretary, you have got a unique position. You have chaired the Federal Reserve. You have got the position you have got now. Is the Fed's target rate for two percent inflation, is that still a real number? Is that the goal, and is that attainable?

Secretary YELLEN. Well, the two percent inflation target was codified as part of the Federal Open Market Committee's policy a number of years ago, and it remains the goal. And more, as Chair Powell has said, the committee is absolutely committed to achieving that.

At this point, inflation using the metric that they use is 2.7 percent. It has come down substantially from its peak, and they continue to put in place a policy that they consider to be restrictive to move it down further.

Mr. KUSTOFF. Well, let me ask——

Secretary YELLEN. I believe it is definitely obtainable.

Mr. KUSTOFF. Let me ask you about that, because you have used the word "substantially decreased" several times during this hearing.

Your predecessor, Lawrence Summers, in an interview on April 10 on Bloomberg TV, said, "You have to take seriously the possibility that the next rate move will be upwards rather than downwards." This morning he released a statement that said this morning's ECI, Employment Cost Index, and housing price inflation figures confirm what I have suspected and feared: Inflation is not securely trending to target levels.

He goes on to say, "Note that the ECI has accelerated from previous quarterly, semiannual, and annual levels. I suspect it has been understating labor cost inflation of late because of reduced work requirements associated with the WFH. The home price inflation figures are also a cause for concern that shelter inflation is not durably declining. With higher interest rates and higher unit prices, rents will at some point reaccelerate. Note that, as many have pointed out, bottlenecks have been easing over the last year or so, reducing inflation momentum. This will not forever—this will not be forever and, given geopolitics, may reverse. Financial conditions are now loose by historical standards, all reasons why the Federal Reserve is in a treacherous environment. Should have been

more careful about easing signals, and now should be very cautious about possible rate cutting.”

It is really hard to disagree with anything he said, isn't it?

Secretary YELLEN. Well, he is a person who has been wrong in the past. He said that it would absolutely take a recession to bring inflation down, and that turned out to be a serious misjudgment.

I don't want to talk about appropriate monetary policy.

Mr. KUSTOFF. Fair enough.

Secretary YELLEN. That is not my job; it is up to the Fed.

But on house prices I would say I consider it highly likely that over the next year house price inflation, shelter inflation will come down considerably. And the reason I believe that is that, if you look at the market for new rental apartments and rentals of new single-family houses, those rental prices have stabilized or, in some cases, declined. And the reason that shelter costs continue to increase as much as they are is because tenants who have leases, when the leases end and their rents are renegotiated, they come up to market.

So it takes a while—

Mr. KUSTOFF. Thank you. Let me reclaim my time just to ask you—

Secretary YELLEN [continuing]. But it will come down.

Mr. KUSTOFF [continuing]. Do you not agree with anything that former Treasury Secretary Summers said in that statement?

Secretary YELLEN. I agree with some of it, but I can't go through it with you.

Mr. KUSTOFF. Okay. Fair enough.

Secretary YELLEN. Yes, I don't disagree with everything in there.

Mr. KUSTOFF. Let me, if I can, in my remaining seconds—in 2018 we passed the Economic Growth, Regulatory Relief, and Consumer Protection Act. I think that the bill was critical because it fixed a one-size-fits-all regulatory structure.

Obviously, you are chairman of the Financial Stability Oversight Council. I know that you all meet soon. My concern is with that bill, which is Senate Banking Bill 2155, it allowed financial regulators to tailor or calibrate regulations for certain banks based on their respective characteristics and risk levels. The one I am particularly concerned is I am concerned about the Basel III framework, the rules relating to Basel III and long-term debt requirement proposals, especially as it relates to regional banks.

My ask of you is, when you chair, you will pay particular attention to the concerns of regional banks as it relates to these rules.

Secretary YELLEN. Well, this is really under the purview of the banking supervisors, the Fed, the FDIC, and the OCC. FSOC doesn't have jurisdiction.

Mr. SMUCKER. The gentleman's time is expired.

Secretary YELLEN. But they have said they are reconsidering the rules that they put out.

Mr. SMUCKER. Mr. Kildee is recognized for five minutes.

Mr. KILDEE. Thank you, Mr. Chairman, and thank you, Secretary Yellen, for your presence here and for the work that you have been doing on behalf of the American people.

I have been proud to work with this Administration on implementing some, I think, monumental pieces of legislation: CHIPS and Science Act, Inflation Reduction Act. Both laws are supporting American workers, creating American jobs, particularly in manufacturing.

And I have been especially focused on manufacturing more solar panels and solar components here in the United States, rather than having such a reliance on China for these goods as we do now. And I know you understand that. In fact, recently you said, and I quote, “China’s overcapacity distorts global prices and production patterns, and hurts American firms and workers, and I could not agree with that statement more. That is exactly right. China’s state-backed solar industry is flooding the global market with cheap products, undercutting our American workers at a time when we are trying to build that capacity.

So to meet this challenge, of course, we need policy that drives demand for U.S.-manufactured solar products across the solar supply chain. And we can do this with strong domestic content rules. And so my question to you comes out of a concern that domestic content guidance may leave out some critical pieces of the solar supply chain.

And so I am curious what Treasury’s plan is to ensure that the final domestic content guidance for solar facilities incentivizes onshoring of the full U.S. solar supply chain and reduces our dependence on China for components like, for example, polysilicon or wafer. Can you comment on that?

Secretary YELLEN. Sure. Well, we put out some initial guidance on domestic content. It was an interagency effort, and we relied heavily on advice from the Department of Transportation in applying the Buy America rules that are referenced in the text of the IRA in determining the categorization of clean energy products. We also consulted with the Department of Energy.

Now, we have gotten a lot of public feedback. Some of it—much of it is from stakeholders throughout the solar supply chain, and this is feedback we will take into account as we revise the regulations.

Mr. KILDEE. I do very much appreciate that, and I think it is such an important element to make sure that we are looking at the entirety of that supply chain because there is a lot of American jobs that could be stood up simply on some of those elements.

And I wonder if you could also comment on another subject that you and I have discussed before, and that is the 48D semiconductor investment tax credit. Making sure that we expand the U.S. supply chain for semiconductors starts with polysilicon—and again, you and I have discussed this—a substance that is 99.5 percent of semiconductor chips.

The U.S. has a technological advantage on polysilicon production, but China and other countries are catching up, and that is one of the reasons that the new tax credit in the CHIPS and Science Act is intended to spur that investment in the semiconductor supply chain.

And so I wonder if you might comment on your willingness of Treasury to continue to work with us on final guidance for the 48D tax credit that supports those critical elements of the semicon-

ductor supply chain. And as you know, for me it is important that that include American-made chip-grade polysilicon.

Secretary YELLEN. So again, I would say that we put out some proposed rules and received a lot of feedback. We explicitly asked questions about the appropriate scope.

I would also say that the Department of Commerce that administers a grant program, we are coordinating closely with them to make sure we cover the entire supply chain. I can't preview the likely final rules, but we have been very attentive to comments that we have received on this.

Mr. KILDEE. I very much appreciate that. And as you know, Congress takes these actions, we have an interest in the implementation process. It is the responsibility of the Administration, but we have an interest, as the authors of the legislation, to ensure that congressional intent is being realized.

So I appreciate your willingness to work with us, and I particularly appreciate your service to our country in the various roles that we have worked together. You do a fine job and are doing a particularly fine job at this hearing.

Secretary YELLEN. Thank you so much, Congressman Kildee. I appreciate that.

Chairman SMITH [presiding]. Mr. Steube.

Mr. STEUBE. Thank you, Mr. Chairman.

Madam Secretary, on March 6, 2024, the Committee on Judiciary and Select Committee of the Weaponization of the Federal Government released a staff report on the financial surveillance in the United States. Have you had a chance to review that?

Secretary YELLEN. I am aware of it, but I haven't reviewed it in detail.

Mr. STEUBE. Well, I would encourage you to read it because it is pretty appalling to the American people.

Last week Chairman Jordan sent you a letter regarding the financial surveillance without a warrant of American citizens. The date—actually, let me go back.

So Mr. Chairman, can I add that report to—I ask unanimous consent to add that report to the record.

Chairman SMITH. Without objection.

[The information follows:]



**FINANCIAL SURVEILLANCE IN THE UNITED STATES:
HOW FEDERAL LAW ENFORCEMENT COMMANDEERED FINANCIAL
INSTITUTIONS TO SPY ON AMERICANS**

Interim Staff Report of the
Committee on the Judiciary
and the
Select Subcommittee on the Weaponization of the Federal Government
U.S. House of Representatives



March 6, 2024

EXECUTIVE SUMMARY

The Committee on the Judiciary and its Select Subcommittee on the Weaponization of the Federal Government are charged by the House of Representatives with upholding fundamental American civil liberties.¹ As a part of this mission, the Committee and Select Subcommittee have uncovered startling evidence that the federal government was engaged in broad financial surveillance, prying into the private transactions of American consumers. This financial surveillance was not predicated on any specific evidence of particularized criminal conduct and, even worse, it keyed on terms and specific transactions that concerned core political and religious expression protected by the Constitution.

On February 7, 2023, the Committee and Select Subcommittee received testimony from retired Federal Bureau of Investigation (FBI) Supervisory Intelligence Analyst George Hill.² During his transcribed interview, Mr. Hill testified that, following the events at the U.S. Capitol on January 6, 2021, Bank of America (BoA), voluntarily and without legal process, provided the FBI with a list of names of all individuals who used a BoA credit or debit card in the Washington, D.C. region between the dates of January 5 and January 7, 2021.³ Mr. Hill also testified that this BoA “data dump” of customer information also included a list of individuals who had ever used a BoA credit or debit card to purchase a firearm, regardless of when or where it was purchased.⁴ This testimony was later confirmed by another former senior FBI official, Joseph Bonavolonta.⁵ In fact, when the BoA information was brought to the attention of Steven Jensen, the then-Section Chief of the FBI’s Domestic Terrorism Operations Section, he acted to “pull” the BoA information from FBI systems because the “leads lacked allegations of federal criminal conduct,” and out of “concern[]” from where it “originated.”⁶

In response to this testimony, the Committee and Select Subcommittee requested documents from BoA and six other national financial institutions about the provision of Americans’ private financial information to federal law enforcement without legal process.⁷ In the months that followed this initial request, the Committee and Select Subcommittee’s oversight has uncovered the magnitude of law enforcement’s access to private financial records of American citizens.

These documents show that following the events of January 6, 2021, federal law enforcement officials from the Treasury Department’s Financial Crimes Enforcement Network (FinCEN) and the FBI initiated multiple discussions with financial institutions.⁸ These meetings included some of the largest financial institutions in the United States, including Barclays, U.S. Bank, Charles Schwab, HSBC, BoA, Paypal, KeyBank, Standard Chartered, Western Union,

¹ Rules of the U.S. House of Representatives, R. X (2023); H. Res. 12, 118th Cong. (2023).

² Transcribed Interview of Mr. George Hill (Feb. 7, 2023).

³ *Id.* at 74-76.

⁴ *Id.*

⁵ Transcribed Interview of Mr. Joseph Bonavolonta at 13 (May 4, 2023).

⁶ Transcribed Interview of Mr. Steven Jensen at 149, 150, 152 (May 19, 2023).

⁷ See, e.g., Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mr. Brian Moynihan, Chief Exec. Officer of Bank of Am. Corp. (May 25, 2023).

⁸ See, e.g., BofA-HJUD-00000008, 11, 14, 15, 16, 22, 29, 33.

Wells Fargo, Citibank, Santander, JPMorgan Chase, and MUFG.⁹ These meetings were geared toward discussing options for financial institutions to share customer information voluntarily with federal law enforcement outside of normal legal processes.¹⁰

The information obtained by the Committee and Select Subcommittee also shows that law enforcement and private institutions shared intelligence products in the aftermath of January 6 through a web portal run by the Domestic Security Alliance Council (DSAC).¹¹ The DSAC is a public-private partnership led by the FBI's Office of Private Sector and the Department of Homeland Security's (DHS) Office of Intelligence and Analysis.¹² The DSAC promotes the "exchange of security and intelligence information" between the federal government and its 650 "member" companies, collectively comprising "two-thirds of the U.S. Gross Domestic Product" and "35 million employees."¹³ Following January 6, the FBI shared an intelligence product titled "Domestic Violent Extremists Likely Emboldened in Aftermath of Capitol Breach," prepared by the FBI, DHS, and the National Counterterrorism Center (NCTC), with financial institutions to alert them to individuals that may fit the profile of criminal and domestic violent extremists (DVEs).¹⁴

This FBI intelligence product, along with other materials shared by federal law enforcement, detail the extent to which federal law enforcement derisively viewed American citizens. For example, one report shared with financial institutions noted that those Americans who expressed opposition to firearm regulations, open borders, COVID-19 lockdowns, vaccine mandates, and the "deep state" may be potential domestic terrorists.¹⁵ Federal law enforcement used this report and materials like it to commandeer financial institutions' databases and ask the financial institutions to conduct sweeping searches of individuals not suspected of committing any crimes. For example, federal law enforcement suggested that banks filter Zelle payments using keywords like "MAGA" and "TRUMP" as part of an ostensible investigation into the events on January 6, 2021, and also warned that "the purchase of books (including religious texts) and subscriptions to other media containing extremist views," could be evidence of "Homegrown Violent Extremism."¹⁶

FinCEN also distributed materials to financial institutions instructing them on how to use Merchant Category Codes (MCCs) to search through transactions to detect potential criminals or "extremists."¹⁷ These MCCs use keywords to comb through transactions, such as "small arms" purchases or recreational stores such as "Cabela's," "Bass Pro Shop," and "Dick's Sporting Goods."¹⁸ Americans doing nothing other than shopping or exercising their Second Amendment rights were being tracked by financial institutions and federal law enforcement. Despite these

⁹ *Id.*; See also USBANK_HJC_000032.

¹⁰ See, e.g., USBANK_HJC_000032.

¹¹ See, e.g., BofA-HJUD-00000051.

¹² See *About DSAC*, DOMESTIC SECURITY ALLIANCE COUNCIL, <https://www.dsac.gov/about> (last visited Jan. 17, 2024).

¹³ *Id.*

¹⁴ See, e.g., BofA-HJUD-00000040.

¹⁵ BofA-HJUD-00000041, 42.

¹⁶ HJC118_00000006, 7.

¹⁷ See, e.g., HJCSWFG_0000454.PPTX.

¹⁸ *Id.* at 4.

transactions having no criminal nexus, FinCEN seems to have adopted a characterization of these Americans as potential threat actors and subject to surveillance.

Without the FBI whistleblowers' disclosures to the Committee and Select Subcommittee, these documents would not have come to light. While it is alarming enough that federal law enforcement and Bank of America used January 6, 2021, as a pretext for surveilling potentially thousands of Americans without a warrant, the documents received by the Committee and Select Subcommittee show a pattern of financial surveillance aimed at millions of Americans who hold conservative viewpoints or simply exercise their Second Amendment rights. This raises serious concerns and doubts about federal law enforcement's and financial institutions' commitment to respecting Americans' privacy rights and fundamental civil liberties.

As the investigation continues, the Committee and Select Subcommittee will continue to work to understand the extent and status of this widespread financial surveillance while also exploring how Congress could enact legislation to further protect Americans' civil liberties.

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BACKGROUND

As part of the oversight conducted by the Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government, the Committee and Select Subcommittee received testimony from retired FBI Supervisory Intelligence Analyst George Hill on February 7, 2023.¹⁹ Mr. Hill testified that Bank of America (BoA) provided the FBI—voluntarily and without any legal process—with a list of individuals who had made transactions in the Washington, D.C., metropolitan area with a BoA credit or debit card between January 5 and January 7, 2021, and that individuals who had previously purchased a firearm with a BoA debit card or credit card were elevated to the top of the list regardless of when or where the purchase was made.²⁰

In his transcribed interview, Mr. Hill stated:

The Bank of America, with no directive from the FBI, data-mined its customer base. And they data-mined a date range of 5 to 7 January [of 2021] any BOA customer who used a BOA product. And by ‘BOA product,’ I mean a debit card or a credit card. They compiled that list. And then, on top of that list, they put anyone who had purchased a firearm during any date. So it was a huge list²¹

Mr. Hill’s testimony was corroborated by the testimony of his former supervisor and former Special Agent-in-Charge of the Boston Field Office, Joseph Bonavolonta.²² Mr. Bonavolonta testified that Boston’s Joint Terrorism Task Force Squad Supervisor, Chief Division Counsel, and Assistant Special Agent-in-Charge of Counterterrorism also brought the BoA data to his attention.²³ Mr. Bonavolonta testified:

[A] lead had been sent to our office from a unit within FBI Headquarters that fell under the Office of Private Sector . . . in the body of the lead, there was . . . information that was provided by Bank of America following a certain number of criteria that in essence aggregated a list of individuals that were supposedly living up in the New England area who . . . either had potentially made . . . certain credit card purchases . . . for hotel reservations or plane tickets, or potential purchases at certain gun stores in and around . . . January 6th or planned for the inauguration date.²⁴

Mr. Bonavolonta also testified that, “one of the [list’s] criteria . . . in terms of Bank of America’s data . . . was related to purchases that had been made at either gun shops or, you

¹⁹ See Transcribed Interview of Mr. George Hill (Feb. 7, 2023).

²⁰ *Id.* at 74-76.

²¹ *Id.* at 74.

²² See Transcribed Interview of Mr. Joseph Bonavolonta at 12 (May 4, 2023).

²³ *Id.* at 11.

²⁴ *Id.* at 12.

know, stores that would sell firearms.”²⁵ Mr. Bonavolonta also stated that the BoA customer data was sent to other FBI field offices across the country, including the Springfield, Illinois field office.²⁶

Mr. Bonavolonta’s testimony was further supported by Steven Jensen, the then-Section Chief of the FBI’s Domestic Terrorism Operations Section. In his transcribed interview, Mr. Jensen testified that the FBI “maintain[s] partnerships with the private sector, to include Bank of America” and that he was “aware that they provided information to the FBI,” but that, to his knowledge, the FBI did not ask for this information from BoA.²⁷ Instead, he testified that the information “was certain purchaser transaction records of individuals that Bank of America provided over to the FBI that wasn’t requested by the FBI. It was of their own volition . . . without any process being issued.”²⁸ When that information was brought to his attention, Mr. Jensen acted to “pull” the BoA information from FBI systems because “the leads lacked allegations of federal criminal conduct,” and out of “concern[.]” from where “it originated.”²⁹ At a hearing before the Committee on July 12, 2023, FBI Director Chris Wray responded to a question about the BoA information and stated that “a number of business community partners all the time, including financial institutions, share information with us about possible criminal activity In the specific instance that you’re asking about, my understanding is that that information was shared with field offices for information only, but, then, recalled to avoid even the appearance of any kind of overreach.”³⁰

Mr. Hill, Mr. Bonavolonta, and Mr. Jensen’s testimony raise serious concerns about federal law enforcement’s compliance with existing legal processes designed to protect Americans’ financial privacy. In light of these revelations, the Committee and the Select Subcommittee requested information from BoA and six other financial institutions to understand how and to what extent financial institutions worked with federal law enforcement to collect, share, and monitor Americans’ data.³¹ In response to these requests, the Committee and Select Subcommittee have received, to date, over a thousand pages of documents from six of the largest financial institutions in the United States, that, together, are responsible for managing trillions of dollars in assets and millions of Americans’ bank accounts.³² Although the former FBI officials

²⁵ *Id.* at 17.

²⁶ *Id.* at 13.

²⁷ Transcribed Interview of Mr. Steven Jensen at 146-47 (May 19, 2023).

²⁸ *Id.* at 147, 150.

²⁹ *Id.* at 149-50, 152.

³⁰ See *Oversight of the Federal Bureau of Investigation Before the H. Comm. on the Judiciary*, 118th Cong. (2023).

³¹ See Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mr. Brian Moynihan, Chief Exec. Officer of Bank of Am. Corp (May 25, 2023); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mr. William S. Demchak, Chief Exec. Officer of PNC Fin. Serv. (June 12, 2023); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mr. Andrew Cecere, Chief Exec. Officer of U.S. Bancorp (June 12, 2023); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mr. Charles W. Scharf, Chief Exec. Officer of Wells Fargo (June 12, 2023); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mr. William H. Rogers, Chief Exec. Officer of Truist Fin. Corp. (June 12, 2023); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Ms. Jane Fraser, Chief Exec. Officer of Citigroup (June 12, 2023); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mr. James Dimon, Chief Exec. Officer of JPMorgan Chase & Co. (June 12, 2023).

³² See FEDERAL RESERVE STATISTICAL RELEASE: LARGE COMMERCIAL BANKS (2023); see also Steve Cocheo, *JPMorgan Chase Defends Contrarian Branch Strategy as Deposit-Gathering Machine*, THE FIN. BRAND (May 24, 2023).

who testified before the Committee and Select Subcommittee believed that BoA acted alone in sending customer data to federal law enforcement, the documents indicate that federal law enforcement encouraged financial institutions to engage in financial surveillance of American citizens. These documents shed light on back-channel networks that facilitate discussions between financial institutions and federal law enforcement, as well as the information-sharing methods that federal law enforcement used as part of an ostensible investigation into the events of January 6.

THE STATUTORY FRAMEWORK FOR ACCESS TO AMERICANS' PRIVATE FINANCIAL DATA

The emergence of credit cards, mobile banking, and other digital marketplaces have resulted in an unprecedented amount of private data entrusted to financial institutions, potentially revealing all sorts of sensitive information about a customer.³³ For that reason, financial records have become an important investigative tool for federal law enforcement.³⁴ Still, federal law enforcement's interest in financial records must be weighed against the privacy interests of Americans. Without greater oversight and the necessary legislative reforms reflecting the advances in modern-day banking practices, Americans' private financial data is still vulnerable to the shortcomings of an outdated legal framework and pervasive government surveillance.

In 1976, the Supreme Court of the United States held in *United States v. Miller* that customers of financial institutions have no reasonable expectation of privacy in documents voluntarily conveyed to a third party.³⁵ In effect, that decision meant that law enforcement did not have to obtain a warrant in order to retrieve bank records held by a financial institution.³⁶ The *Miller* decision triggered Congress to enact the Right to Financial Privacy Act of 1978 (RFPA), which afforded some privacy protections to financial records held by a third party.³⁷ Most notably, the RFPA requires law enforcement to utilize certain legal processes as a condition of receiving financial records, subject to a number of exceptions.³⁸ In addition, the Bank Secrecy Act (BSA) imposes additional reporting obligations on financial institutions and Section 314(a) of the USA Patriot Act of 2001 gave federal law enforcement greater access to account information entrusted to financial institutions.³⁹ From the information obtained by the Committee and Select Subcommittee, these pieces of legislation have failed to adequately protect Americans' financial information. What it has left is an expansive, backdoor information-sharing regime led by the nation's most powerful law enforcement agencies and their partners in the financial sector.

A. The Right to Financial Privacy Act

In general, the RFPA protects customer information by limiting access to the "financial records of any customer from a financial institution unless the financial records are reasonably described" and the "government authority" receives customer consent, or the records are disclosed in accordance with certain notice requirements pursuant to an administrative subpoena, search warrant, judicial subpoena, or formal written request.⁴⁰ However, if one of the eighteen exceptions under the RFPA apply, legal process and notice may not be required.⁴¹ In some circumstances, these exceptions allow the FBI and the Financial Crimes Enforcement Network

³³ See Nicholas Anthony, *The Right to Financial Privacy*, CATO (May 2, 2023), <https://www.cato.org/policy-analysis/right-financial-privacy>.

³⁴ See, e.g., FINANCIAL CRIMES ENFORCEMENT NETWORK, LAW ENFORCEMENT OVERVIEW.

³⁵ 425 U.S. 435, 442-46 (1976).

³⁶ See *id.* at 446.

³⁷ See Right to Financial Privacy Act, 12 U.S.C. §§ 3401-3423; see also Nicholas Anthony, *supra* note 33.

³⁸ See, e.g., 12 U.S.C. § 3413.

³⁹ See FINANCIAL CRIMES ENFORCEMENT NETWORK, FINCEN'S 314(A) FACT SHEET; see also FINANCIAL CRIMES ENFORCEMENT NETWORK, THE BANK SECRECY ACT.

⁴⁰ See 12 U.S.C. § 3402; see also 12 U.S.C. §§ 3404-3408.

⁴¹ See, e.g., 12 U.S.C. § 3413(g) (relating to disclosure pursuant to legitimate law enforcement inquiry).

(FinCEN), along with other government authorities, to pursue certain customer bank records without utilizing any legal process.⁴² Doing so, however, may limit the kinds of records the requester may receive.⁴³

Under many circumstances, the exceptions to the RFPA function as the rule. For example, the RFPA does not permit the “withholding of financial records or information required to be reported in accordance” with any other statute or rule⁴⁴ and allows financial institutions to voluntarily notify any “[g]overnment authority that such institution, or officer, employee, or agent has information which *may be relevant to a possible violation of any statute or regulation*.”⁴⁵ The customer has no redress available against the institution for such a disclosure or for its failure to provide the customer with notice.⁴⁶ Another exception to the RFPA allows for “disclosure pursuant to legitimate law enforcement inquiry.”⁴⁷ That exception permits law enforcement to seek the “name, address, account number, and type of account of any customer or ascertainable group of customers associated with a financial transaction or class of financial transactions”⁴⁸ Similarly, the RFPA does not protect against actions initiated by the U.S. Secret Service or other “government authorit[ies] authorized to conduct foreign counter- or foreign positive-intelligence activities for purposes of conducting such activities . . . or a government authority authorized to conduct investigations of, or intelligence or counterintelligence analyses related to, international terrorism for the purpose of conducting such investigations or analyses.”⁴⁹ The FBI is also excepted from the RFPA’s general protections and legal process requirements if the FBI certifies to a financial institution that the records are “sought for foreign intelligence purposes to protect against international terrorism or clandestine intelligence activities.”⁵⁰ The financial institution is generally prohibited from disclosing to any person, including its impacted customers, that any such intelligence-related request has been made.⁵¹

B. Section 314(a) of the USA Patriot Act

Section 314(a) of the USA PATRIOT Act of 2001 required the Secretary of the Treasury to “adopt regulations to encourage regulatory and law enforcement authorities to share with financial institutions information regarding individuals, entities, and organizations engaged in or reasonably suspected, based on credible evidence, of engaging in terrorist acts or money laundering activities.”⁵² The law authorized “federal, state, local, and foreign (European Union) law enforcement agencies, through FinCEN, to reach out to more than 37,000 points of contact at more than 16,000 financial institutions to locate accounts and transactions of persons that may be

⁴² *Id.*

⁴³ *Id.*

⁴⁴ 12 U.S.C. § 3413(d).

⁴⁵ 12 U.S.C. § 3403(c) (emphasis added).

⁴⁶ *Id.*

⁴⁷ 12 U.S.C. § 3413(g).

⁴⁸ *Id.*

⁴⁹ 12 U.S.C. § 3414(a)(1).

⁵⁰ 12 U.S.C. § 3414(a)(5).

⁵¹ 12 U.S.C. § 3414(c).

⁵² FINANCIAL CRIMES ENFORCEMENT NETWORK, FINCEN’S 314(A) FACT SHEET (Feb. 26, 2019), [https://www.fincen.gov/sites/default/files/shared/314\(a\)%20FACTS%20AND%20FIGURES.pdf](https://www.fincen.gov/sites/default/files/shared/314(a)%20FACTS%20AND%20FIGURES.pdf).

involved in terrorism or money laundering.⁵³ When a request is received, “financial institutions must query their records for data matches,” and then report whether there is a positive match to FinCEN within two weeks of receiving the request.⁵⁴ These requests are subject to strict confidentiality requirements prohibiting their disclosure.⁵⁵

Put differently, federal law enforcement is able to direct more than 16,000 financial institutions to conduct a search of their financial records if law enforcement “reasonably suspect[s], based on credible evidence,” that the suspected individual or entity is engaging in terrorist activity or money laundering.⁵⁶ If the financial institution identifies a positive match, it reports to FinCEN the name, account and transaction, as well as the social security number, taxpayer identification, passport number or any other identifying information related to the individual.⁵⁷ This is done without any judicial involvement.⁵⁸ The Committee and Select Subcommittee have obtained documents indicating that federal law enforcement invoked its “terrorist activity” authority under Section 314(a) as a part of its investigation into the events at the U.S. Capitol on January 6, 2021.⁵⁹

C. The Bank Secrecy Act

Finally, the Bank Secrecy Act (BSA) authorizes the Department of the Treasury to impose certain far-reaching reporting obligations on businesses and financial institutions.⁶⁰ As part of these requirements, financial institutions must file a Currency Transaction Report (CTR) with FinCEN reflecting the information of any individual involved in any transaction of over \$10,000, including the individual’s government-issued identification and Social Security Number.⁶¹ The BSA also “requires that a bank or other financial institution file a SAR [suspicious activity report] whenever it identifies a ‘suspicious transaction *relevant to a possible violation of law or regulation*,’”⁶² while placing a *de facto* gag order on financial institutions prohibiting the revelation of “any information that would reveal the transaction has been reported” to any third party.⁶³ Indeed, “SARs contain personally identifiable information about

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ 31 C.F.R. § 1010.520(b)(3)(iv)(B).

⁵⁶ 31 C.F.R. § 1010.520(b)(3).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ TFC000007-8; *see also* Letter from John Adams, Legal Counsel for Truist. Fin. Corp., to Rep. Jim Jordan Chairman, H. Comm. on the Judiciary (July 18, 2023) (discussing “several channels through which banks routinely communicate with law enforcement,” that include “responding to requests for account information governed by Section 314(a) of the Patriot Act.”).

⁶⁰ *See, e.g.*, FINANCIAL CRIMES ENFORCEMENT NETWORK, THE BANK SECRECY ACT.

⁶¹ *See, e.g.*, FINANCIAL CRIMES ENFORCEMENT NETWORK, NOTICE TO CUSTOMERS: A CTR REFERENCE GUIDE; *see also Oversight of the Financial Crimes Enforcement Network (FinCEN) and the Office of Terrorism and Financial Intelligence (TFI) Before the H. Comm. on Financial Services*, 118th Cong. 2 (Feb. 12, 2024) (statement for the record of Brian Knight, Senior Research Fellow, George Mason Univ.) (observing that the value of \$10,000 in 1974 at the time of the BSA’s enactment is roughly worth \$63,900 today).

⁶² Letter from Corey Tellez, Acting Assistant Sec’y, Office of Legislative Affairs, U.S. Dep’t of The Treasury, to Rep. Jim Jordan Chairman, H. Comm. on the Judiciary at 2 (Feb. 9, 2024) (emphasis added).

⁶³ *See* 31 U.S.C. 5318(g)(1); *see also* 31 C.F.R. § 1020.320; Letter from Ms. Karen Christian and Mr. Raphael Prober, Legal Counsel for Bank of Am., to Rep. Jim Jordan Chairman, H. Comm. on the Judiciary (June 22, 2023) (discussing the Bank Secrecy Act and obligations to “confidentially report potentially suspicious activity”).

individuals and entities, details about financial transactions, and unconfirmed information regarding potential violations of law or regulation . . . subject to strong confidentiality protections . . .”⁶⁴ The BSA also grants broad immunity to “[a]ny financial institution that makes a voluntary disclosure of any possible violation of law or regulation to a government agency.”⁶⁵ By contrast, failure to file a SAR can result in large monetary penalties.⁶⁶ This creates a strong incentive for financial institutions to file defensively, even when there is little reason to do so.⁶⁷

In other words, the BSA shields financial institutions from ever facing liability for any disclosure made to law enforcement regarding its customers’ transactions—regardless of the financial institutions’ reasonableness or motivations—and the institution never has to disclose to the customer that the transaction was reported to law enforcement, leaving meaningful judicial review lacking. The BSA also cloaks the reporting of a “suspicious transaction” activity report in a nearly impenetrable veil, which some banks have used in an attempt to shield these reports from congressional oversight.⁶⁸ Combined, this framework treats banks as agents of the government and obstructs congressional oversight of federal law enforcement and its relationship with the financial sector, leaving the American financial system ripe for pervasive surveillance. Indeed, the Supreme Court of the United States has expressed skepticism about the BSA’s reporting requirements in considering its constitutionality, noting in a 1974 opinion that the “reporting requirements . . . would pose substantial and difficult constitutional questions” and warning that “the potential for abuse is particularly acute where, as here, the legislative scheme permits access to this information without invocation of the judicial process.”⁶⁹

To illustrate the breadth of the BSA’s reporting requirements, FinCEN announced that in 2019 it received over 20 million filings from more than 97,000 financial institutions as required by the BSA.⁷⁰ According to FinCEN, those filings “provid[ed] a *wealth of potentially useful* information to [government] agencies . . .”⁷¹ Among those BSA-required filings, FinCEN reported that it received over 4.3 million SARs in 2022, nearly doubling from the number it received in 2019. FinCEN also reported that “Other Suspicious Activities” was the most reported reason for filing a SAR, with “terrorist financing” as one of the least reported SAR activity

⁶⁴ Letter from Corey Tellez, *supra* note 62 at 2.

⁶⁵ 31 U.S.C. 5318(g)(3).

⁶⁶ FINANCIAL CRIMES ENFORCEMENT NETWORK, FINCEN PENALIZES U.S. BANK OFFICIAL FOR CORPORATE ANTI-MONEY LAUNDERING FAILURES (Mar. 4, 2020) (noting that FinCEN assessed \$450,000 civil penalty against U.S. Bank Official for “failure to prevent violations of the Bank Secrecy Act” and \$185 million civil penalty against U.S. Bank for “willfully violating the BSA’s requirements”).

⁶⁷ *Oversight of the Financial Crimes Enforcement Network (FinCEN) and the Office of Terrorism and Financial Intelligence (OTFI) Before the H. Comm. on Financial Services*, 118th Cong. 4 (Feb. 12, 2024) (statement for the record of Brian Knight, Senior Research Fellow, George Mason Univ.).

⁶⁸ *See, e.g.*, Letter from Ms. Karen Christian and Mr. Raphael Prober, Legal Counsel for Bank of Am., to Rep. Jim Jordan Chairman, H. Comm. on the Judiciary at 2-3 (June 22, 2023) (discussing confidentiality under the Anti-Money Laundering Act and Bank Secrecy Act.).

⁶⁹ 416 U.S. 21, 79-80 (1974).

⁷⁰ Nicholas Anthony, *Reporting FinCEN’s Suspicious Activity*, CATO (Apr. 13, 2022), <https://www.cato.org/blog/reporting-fincens-suspicious-activity>.

⁷¹ *Id.* (emphasis added).

types.⁷² This means that FinCEN is using the BSA and its SAR reporting requirements to track far more transactions than just those limited to money laundering and terrorist financing. Similarly, FinCEN reported that it received over 20.6 million CTRs in 2022, averaging to nearly 56,500 per day.⁷³ A CTR contains sensitive financial data and is required to be filed for any transaction over \$10,000, regardless of whether anything about that transaction is “suspicious” or otherwise related to criminal activity.⁷⁴

As a result, a vast amount of personal financial information is regularly shared with FinCEN and, in turn, to other law enforcement agencies via a searchable BSA database.⁷⁵ For example, in 2020, “FinCEN reported that DOJ agencies conducted more than 500,000 searches of SARs through its database.”⁷⁶ However, neither Congress nor American consumers have any real access to examine the propriety of the SARs or law enforcement’s use of them.⁷⁷ The Committee and Select Subcommittee’s investigation has obtained documents revealing that SARs were likely filed on sprawling classes of transactions and individuals despite the lack of any link to criminal—or even “suspicious”—activity.

⁷² FINANCIAL CRIMES ENFORCEMENT NETWORK (FINCEN) YEAR IN REVIEW FOR FY 2022 (2023); *see also Special Report: suspicious activity reports surge; 2023 filings on pace for another record*, THOMSON REUTERS (June 9, 2023).

⁷³ FINANCIAL CRIMES ENFORCEMENT NETWORK (FINCEN) YEAR IN REVIEW FOR FY 2022 (2023).

⁷⁴ *See* FINANCIAL CRIMES ENFORCEMENT NETWORK, NOTICE TO CUSTOMERS: A CTR REFERENCE GUIDE.

⁷⁵ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-22-105-242, BANK SECRECY ACT: ACTION NEEDED TO IMPROVE DOJ STATISTICS ON USE OF REPORTS ON SUSPICIOUS FINANCIAL TRANSACTIONS at 12 (2022).

⁷⁶ *Id.*

⁷⁷ *See, e.g.*, 31 U.S.C. 5318(g)(2)(A); 31 C.F.R. § 1020.320(e)(1).

FINANCIAL SURVEILLANCE OF AMERICAN CONSUMERS

The Committee and Select Subcommittee have obtained documents showing that federal law enforcement’s investigation, predicated on the events that transpired at the U.S. Capitol on January 6, 2021, devolved into a fishing expedition for Americans’ financial data. Federal law enforcement agencies, including FinCEN and the FBI, treated lawful transactions as suspicious and shared information with financial institutions through backdoor channels, often circulating materials exhibiting a clear animus towards conservative viewpoints. In addition, FinCEN and the FBI relied on Zoom discussions, private and online government-run portals, as well as sweeping searches of financial institutions’ records to conduct its investigation. Given the important civil liberties at stake, federal law enforcement’s overreach and political bias is alarming.

A. Federal law enforcement used informal meetings and backchannel discussions with financial institutions to devise the best methods for gathering Americans’ private financial information.

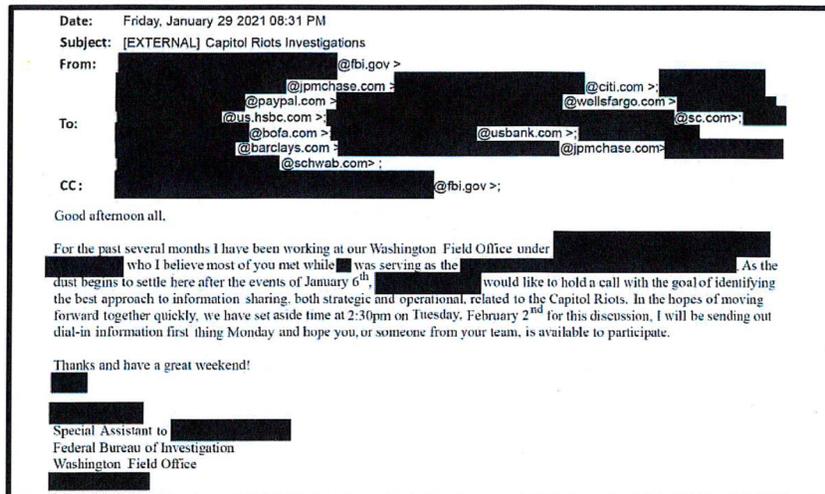
Federal law enforcement officials organized Zoom discussions with financial institutions as part of their investigation into the events of January 6, 2021.⁷⁸ Participants in these meetings included Barclays, U.S. Bank, Charles Schwab, HSBC, BoA, Paypal, KeyBank, Standard Chartered, Western Union, Wells Fargo, Citibank, Santander, JPMorgan Chase, Union Bank, and MUFJ.⁷⁹ In one meeting, an FBI official from the Washington Field Office reached out to a number of financial institutions to arrange a meeting with the goal of “identifying the best approach to information sharing, both strategic and operational,” in the wake of the events of January 6.⁸⁰ At least five other Zoom meetings were scheduled by FinCEN officials and financial institutions and included the subject “Capitol Riots.”⁸¹ Viewed together, these meetings suggest that federal law enforcement officials were brainstorming informal methods—outside of normal legal processes—for obtaining private customer information from financial institutions.

⁷⁸ See, e.g., BofA-HJUD-00000008, 11, 14, 15, 16, 22, 29, 33; USBANK_HJC_000032 [hereinafter “Zoom Meetings”].

⁷⁹ *Id.*

⁸⁰ USBANK_HJC_000032.

⁸¹ Zoom Meetings, *supra* note 78.



B. Federal law enforcement circulated politicized materials that evidenced hostility towards conservative viewpoints and weaponized financial institutions' databases by treating lawful transactions as suspicious.

Federal law enforcement circulated materials to financial institutions as part of an information-sharing operation that alerted financial institutions to the risk of customers and accounts that may be associated with conservative views.⁸² In particular, federal law enforcement attempted to cast swaths of lawful and otherwise harmless transactions as potentially suspicious.⁸³ Given that these materials were distributed to some of the largest financial institutions and companies in the world, their reach could potentially impact the transactions and accounts of hundreds of millions of customers without the customers ever knowing it.

i. Federal law enforcement shared information equating conservative beliefs with domestic terrorism through a controlled-access portal managed by the "Domestic Security Alliance Council."

One way that information is shared from federal law enforcement to certain corporations and financial institutions is through an obscure government-run portal led by the Domestic Security Alliance Council (DSAC) that is only accessible to its "members."⁸⁴

⁸² See, e.g., HJCSWFG_0000454.PPTX.

⁸³ See, e.g., BofA-HJUD-00000225.

⁸⁴ About DSAC, DOMESTIC SECURITY ALLIANCE COUNCIL, <https://www.dsac.gov/about> (last visited Jan. 17, 2024); see also BofA-HJUD-00000051.

The DSAC is a program spearheaded by the FBI's Office of Private Sector Engagement Programs and Initiatives (OPS) and the Department of Homeland Security's Office of Intelligence and Analysis that promotes "timely and effective exchange of security and intelligence information between the federal government and the private sector."⁸⁵ According to the official website, the DSAC is a "corporate membership program," that requires all of its members to be "for-profit" and "generate a minimum of \$1 billion in annual revenue . . ."⁸⁶ Its mission includes facilitating "enduring relationships among its private sector member companies, across the FBI enterprise, and with the Department of Homeland Security (DHS) Headquarters . . . to detect, prevent, and deter criminal acts."⁸⁷ Since its creation in 2005, "[t]he DSAC program has grown to include more than 650 member companies . . . collectively account[ing] for nearly two-thirds of the U.S. Gross Domestic Product and employ[ing] more than 35 million people."⁸⁸ Through the DSAC portal, among other avenues, the FBI, DHS, and other government agencies are able to share non-public intelligence products, including Liaison Information Reports, with members of the private sector.⁸⁹

One such intelligence product, titled "Domestic Violent Extremists Likely Emboldened in Aftermath of Capitol Breach," was shared as a Liaison Information Report and prepared by the FBI, DHS, and the National Counterterrorism Center (NCTC).⁹⁰ The FBI's Office of Private Sector shared the report with financial institutions and other DSAC members on January 18,

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ FEDERAL BUREAU OF INVESTIGATION, OFFICE OF PRIVATE SECTOR, PRIVATE SECTOR ENGAGEMENT PROGRAMS AND INITIATIVES.

⁹⁰ BofA-HJUD-00000040.

2021 to “alert private sector partners that the 6 January 2021 violent breach by suspected domestic violent extremists (DVEs) into the U.S. Capitol Building may serve as a driver for a diverse set of DVEs.”⁹¹ In the report, the FBI described reasons that “may play in mobilizing criminal actors and DVEs to violence.”⁹² Among the reasons that may mobilize DVEs to violence is “the belief in the existence of global or ‘deep state’ actors who work to manipulate various social, political and/or economic conditions . . .”⁹³ It also assesses that “DVEs’ efforts to engage in violence at lawful gatherings will probably increase throughout 2021, as some DVEs perceive increased socio-political pressures.”⁹⁴ Those “pressures” mobilizing DVEs to violence, in the eyes of the FBI, included opposition to “firearm legislation, the easing of immigration restrictions, and new limits on the use of public land,” as well as “narratives by DVEs that the 2020 General Election was illegitimate,” or “discontent with renewed measures to mitigate the spread of COVID-19, the ordered dissemination of COVID-19 vaccinations, and the efficacy and/or safety of COVID-19 vaccinations.”⁹⁵

OFFICE OF THE PRIVATE SECTOR
Domestic Violent Extremists (DVEs)

Range of DVE Actors Likely to Pose Increasing Threat at Lawful Protests, Rallies, Demonstrations, etc.

Throughout 2020, DVEs with differing goals and perspectives exploited such events to promote, organize, conspire, and plot against ideological opponents and other targets. DVEs' efforts to engage in violence at lawful gatherings will probably increase throughout 2021, as some DVEs perceive increased socio-political pressures. Such perceived pressures may stem from, but not be limited to, one or more of the following factors:

- The potential for shifts in various policies many DVEs may perceive to oppose or threaten their ideological goals and agendas or feed into existing narratives many DVEs subscribe to regarding the U.S. government's exercise of power, influence, and initiatives; possibly including firearm legislation, the easing of immigration restrictions, and new limits on the use of public land.
- Ongoing narratives by DVEs that the 2020 General Election was illegitimate, or fraudulent, and the subsequent belief its results should be contested or unrecognized.
- Some DVEs' discontent with renewed measures to mitigate the spread of COVID-19, the ordered dissemination of COVID-19 vaccinations, and the efficacy and/or safety of COVID-19 vaccinations.

⁹¹ BofA-HJUD-00000040 (email from FBI to BoA “attach[ing] LIR titled ‘Domestic Violent Extremists Likely Emboldened in Aftermath of Capitol Breach’” and referencing the report as an “addition to” the “daily *Overnight News*” intelligence shared via the DSAC portal) (emphasis added); *see also* BofA-HJUD-00000041, 42, 43 (including LIR report); USBANK_HJC_000037.

⁹² *Id.* at 41.

⁹³ *Id.*

⁹⁴ *Id.* at 42.

⁹⁵ *Id.*

indicative of domestic violent extremism.⁹⁹ Ironically, the report itself was likely shared through a secret, government-run information-sharing portal that is only accessible to the government and some of the largest “for-profit companies” in the world.¹⁰⁰ To put a finer point on this hypocrisy, the report defines “deep state actors” as those who “work to manipulate various social [and] political” conditions.¹⁰¹ In the same breath, the report acknowledges the existence of “removal efforts” of social media platforms against potential domestic violent extremists.¹⁰² In effect, the report admits that social media companies are engaging in censorship—or the “manipulat[ion]” of speech—while labeling those who believe in the existence of such manipulation as potential domestic terrorists.¹⁰³

ii. The FBI commandeered financial institutions’ databases to conduct sweeping searches without an individualized nexus to particularized criminal conduct.

The Fourth Amendment to the Constitution protects against unreasonable searches and seizures by the federal government.¹⁰⁴ The founders likely would have never imagined a circumstance in which the federal government would conduct mass surveillance of Americans’ financial data. Yet, the information available to the Committee and Select Subcommittee shows how federal law enforcement sought sweeping searches of financial institutions’ customer databases without legal process, and even circulated materials instructing financial institutions on how to conduct those searches using Merchant Category Codes (MCCs) and other materials to alert them to customers likely to be associated with conservative political views.

1. The FBI contacted Bank of America directly and provided extremely broad search terms for querying its database and sharing any potential matches with federal law enforcement.

At 9:56 a.m. on January 15, 2021, an FBI official emailed BoA with the subject line “upcoming SAR product idea/brainstorming and check-in with you both.”¹⁰⁵ In the body of that email, the FBI official wrote that “[i]f either or both of you have time this morning to discuss SARs [Suspicious Activity Reports] and a couple ideas, that would be great.”¹⁰⁶

⁹⁹ *Id.* at 41.

¹⁰⁰ See BofA-HJUD-00000040, *supra* note 91; see also, e.g., BofA-HJUD-0000054 (Jan. 28, 2021, email from DSAC Portal to BoA (showing the DSAC portal distributing intelligence products titled “Overnight News – January 28, 2021” and suggesting distribution of the Liaison Information Report via the DSAC portal.) (emphasis added).

¹⁰¹ BofA-HJUD-00000041.

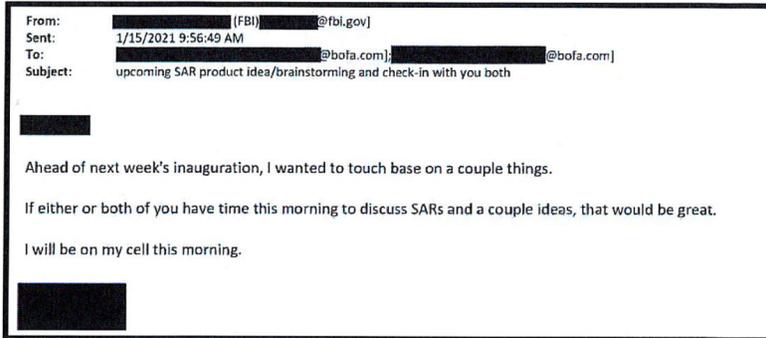
¹⁰² BofA-HJUD-00000041.

¹⁰³ Compare BofA-HJUD-00000041 with BofA-HJUD-00000042.

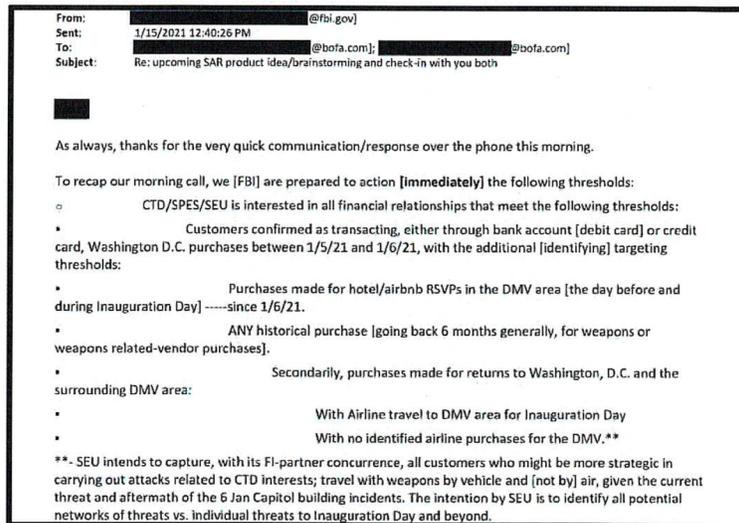
¹⁰⁴ U.S. Const. amend. IV.

¹⁰⁵ BofA-HJUD-00000001.

¹⁰⁶ *Id.*



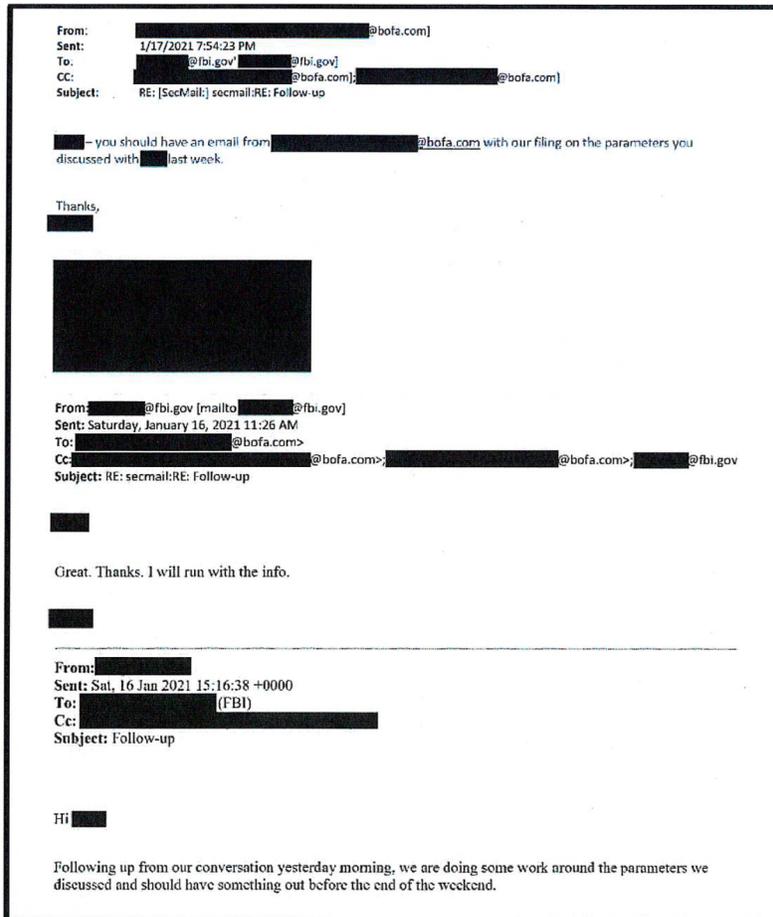
In a subsequent email just a couple of hours later, the FBI told BoA “thanks for the very quick communication/response over the phone this morning . . . [t]o recap our morning call, we [FBI] are prepared to action **[immediately]** the following thresholds,” supplying BoA with broad search thresholds for querying the financial transactions of its customers for potential matches.¹⁰⁷ The FBI explained that it “is interested in all financial relationships” of any BoA customer transacting in Washington, D.C. and that made “ANY historical purchase” of a firearm, or that had purchased a hotel, Airbnb, or airline travel within a given date range.¹⁰⁸



¹⁰⁷ BofA-HJUD-00000002.

¹⁰⁸ *Id.*

Just one day later, BoA confirmed to the FBI that it was “doing some work around the parameters we discussed and should have something out before the end of the weekend.”¹⁰⁹ BoA delivered as promised. On the evening of Sunday, January 17, 2021, BoA replied to the FBI indicating that it had compiled a product that was responsive to the FBI’s parameters, explaining “you [FBI] should have an email from [redacted]@bofa.com with our filing on the parameters you discussed with [redacted] last week.”¹¹⁰



¹⁰⁹ BofA-HJUD-00000197.

¹¹⁰ *Id.*

This massive search request, sent directly from the FBI to BoA, appears to have occurred via direct email, without any legal process or individualized criminal nexus.¹¹¹ As a result, a “filing” was created that was seemingly a “data dump” of BoA account information—reflecting potentially thousands of customers—that was turned over to the FBI.¹¹²

The Committee and Select Subcommittee requested, and subsequently subpoenaed, this “filing” from BoA.¹¹³ The Committee and Select Subcommittee also offered to accommodate BoA by allowing “redact[ions] to protect personal identifiable information.”¹¹⁴ Despite this, BoA declined to produce the requested documents, writing “[e]ven though a subpoena has now been issued, federal law, including the Anti-Money Laundering Act and the Bank Secrecy Act, together with their implementing regulations, still would prevent the Bank from disclosing certain documents.”¹¹⁵

While BoA has refused to provide the Committee and Select Subcommittee with its “filing on the parameters” it discussed and shared with the FBI, it is clear that the FBI was not interested in particularized criminal activity.¹¹⁶ Rather, the FBI cast a wide net with its search parameters and used BoA’s database to identify responsive accounts, creating a sprawling file of individuals whose financial accounts were flagged for federal law enforcement without any particularized allegation of engaging in federal criminal conduct. It is highly disturbing for any huge financial institution to comply with such a sweeping request from federal law enforcement and hand over its customers’ information without any legal process or regard for the privacy of its customers’ information.¹¹⁷

2. FinCEN, in coordination with a select group of financial institutions, shared Merchant Category Codes and politicized search terms and typologies for financial institutions to probe their databases for problematic accounts or transactions.

In addition to the sweeping requests from the FBI to financial institutions, FinCEN circulated materials to financial institutions containing instructions on how to search their databases and flag certain transactions using Merchant Category Codes (MCCs), typologies, and other key terms, phrases, or groups of concern. MCCs are used by “[p]ayment brands, issuers and acquirers . . . to categorize, track and restrict transactions” and can be used for “tax reporting, interchange promotion and gathering information about cardholder purchasing behavior.”¹¹⁸ MCCs, therefore, are a powerful tool for monitoring and restricting customer

¹¹¹ *See id.*

¹¹² *See id.*

¹¹³ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mr. Brian Moynihan, Chief Exec. Officer of Bank of Am. Corp. (Nov. 16, 2023).

¹¹⁴ *Id.* at 4.

¹¹⁵ Letter from Ms. Karen Christian and Mr. Raphael Prober, Legal Counsel for Bank of Am., to Rep. Jim Jordan Chairman, H. Comm. on the Judiciary at 2 (Dec. 15, 2023) (discussing the Anti-Money Laundering Act and the Bank Secrecy Act as “prevent[ing] the Bank from disclosing certain documents”).

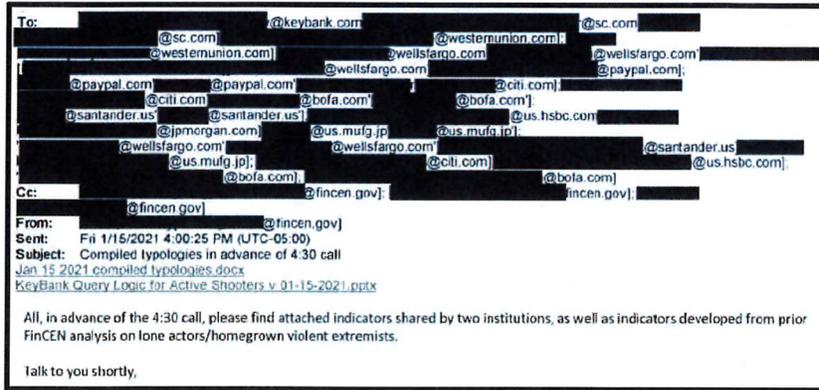
¹¹⁶ BofA-HJUD-00000002.

¹¹⁷ *See* BofA-HJUD-00000197; FEDERAL RESERVE STATISTICAL RELEASE, LARGE COMMERCIAL BANKS (2023).

¹¹⁸ *E.g.*, CITIBANK, MERCHANT CATEGORY CODES (2015), <https://www.citibank.com/ts/solutions/commercial-cards/assets/docs/govt/Merchant-Category-Codes.pdf>. For example, transactions related to “Motor Vehicle Supplies

purchases. The use of select MCCs and politicized search terms and phrases suggest a concerted effort to target a certain segment of the American population. Even worse, they show how federal law enforcement leveraged its relationship with financial institutions to search transactions and account records without legal process or the customers' knowledge or approval.

a. FinCEN provided financial institutions with politicized materials casting conservative points of view and lawful purchases as suspicious.



On January 15, 2021, at 4:00 P.M., FinCEN circulated two attachments to various financial institutions titled “Jan 15 2021 compiled typologies” and “KeyBank Query Logic for Active Shooters v. 01-15-2021.”¹¹⁹ These attachments provided financial institutions with suggested search terms—such as “AMERICA FIRST,” “TRUMP,” and “MAGA”—to use for identifying transactions that may be an indication “of involvement in riots or potential violence.”¹²⁰

and New Parts” may be identified with the MCC “5013” and transactions made at “Grocery Stores” may use the MCC “5411.”

¹¹⁹ HJC118_0000005 (showing email from FinCEN distributing “search terms” and “compiled typologies” of “extremism indicators” and “KeyBank Query Logic” PowerPoint slides as attachments to KeyBank, Standard Chartered, Western Union, Wells Fargo, Paypal, Citibank, Bank of America, Santander, HSBC, MUFG, and JPMorgan).

¹²⁰ HJC118_0000006.

1) Bank submission:

One of the things we've done is search Zelle payment messages for indications of involvement in the riots or potential violence. Here are the key words we used below to pull the data. [...] from our initial analysis "Storm the", "Capitol", "white power" and "Antifa" seem to be yielding the best results.

%PRESIDENT%
 %PREZ%
 %TRUMP%
 %KAMALA%
 %BIDEN%
 %DIE%
 %KILL%
 %SHOOT%
 %BLOW%
 %GUN%
 %DEATH%
 %MURDER%
 KRAKEN
 ANTIFA
 LAST SONS
 OATH KEEPER
 WHITE POWER
 CAPITOL
 STORM THE
 CIVIL WAR
 GROYPYER ARMY
 CAMP AUSCHWITZ
 AMERICA FIRST
 THREEPERS
 MILITIA
 CAPITAL
 MAGA
 PATRIOT
 BOOGALOO
 PROUD B%
 CIVIL WAR
 PELOSI
 PENCE
 Schumer

2) Lone Actor/Homegrown Violent Extremism Indicators (developed from prior FinCEN analysis)

- ✓ Long periods of account inactivity, or show normal usage, but in the months or years preceding an attack, a sudden surge or change in activity type.
- ✓ Sudden purchase of firearms, firearm parts and accessories, ammunition, tactical gear at outdoor supply stores, and purchases at shooting ranges not commensurate with previously known customer behavior.

In addition, the documents include a "prior FinCEN analysis" suggesting indicators of potential "Lone Actor/Homegrown Violent Extremism."¹²¹ Those indicators included, among other items, "frequent ATM withdrawals and wire transfers with no apparent economic or business purpose"; "transportation charges, such as bus tickets, rental cars, or plane tickets, for travel to areas with no apparent purpose"; "purchases that appear excessive or unusual for hobbyist or other legitimate use"; "the purchase of books (including religious texts) and

¹²¹ HJC118_0000006.

subscriptions to other media containing extremist views”; and “donations to organizations known to promote radicalism.”¹²²

- ✓ Frequent cash deposits of unknown origin, followed by debit or credit card purchases at retailers not commensurate with previously known customer purchase activity.
- ✓ Frequent ATM withdrawals and wire transfers with no apparent economic or business purpose.
- ✓ Sudden account closings, asset liquidations, and disbursements in days or weeks leading up to attacks.
- ✓ Life insurance policy purchases not commensurate with typical behavior for the type of account holder.
- ✓ Transportation charges, such as bus tickets, rental cars, or plane tickets, for travel to areas with no apparent purpose or not commensurate with the previous travel history of the customer, for example, travel to high-risk areas or indirect flightpaths for no apparent legitimate reason.
- ✓ Purchases that appear excessive or unusual for hobbyist or other legitimate use.
- ✓ The purchase of pre-cursor chemicals, fireworks, or potential bomb-making equipment, for example, ammonium nitrate, citric acid, aluminum powder, triacetone triperoxide [TATP], potassium nitrate, red iron oxide, tannerite, lengths of piping, BB pellets, cell phones, and others.
- ✓ Purchases of international calling cards not commensurate with previously known customer behavior.
- ✓ The purchase of books (including religious texts) and subscriptions to other media containing extremist views.
- ✓ Donations to organizations known to promote radicalism.

As shown, the list, prepared by FinCEN, demonstrates that federal law enforcement is interested in scrutinizing otherwise lawful transactions such as “ATM withdrawals,” transportation-related expenses for “no apparent legitimate reason,” “donations to organizations known to promote radicalism,” and “the purchase of books (including religious texts) and subscriptions to other media containing extremist views.”¹²³ In other words, the federal government broadly enlisted financial institutions to flag certain kinds of purchases made by Americans that the government deemed to be unnecessary—*e.g.*, taking trips for “no apparent legitimate reason”—or extreme—*e.g.*, purchasing certain books or “religious texts.”¹²⁴ There is no indication in the documents that FinCEN recognized the serious civil liberty concerns associated with its demands or took any steps to protect Americans’ financial privacy.

In the same email, FinCEN also circulated a PowerPoint slide deck as an attachment, authored by KeyBank, titled, “KeyBank’s Query Logic for Active Shooters,” that “intends to detect potential active shooters, who may include dangerous International Terrorists / Domestic Terrorists / Homegrown Violent Extremists (‘Lone Wolves’).”¹²⁵ That slideshow showed in stark terms how federal authorities and financial institutions can weaponize MCCs to identify and target Americans using the financial system.

¹²² HJC118_0000007.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ HJCSWFG_0000454.PPTX. at 2.

Active Shooter Detection – Intent of Query

- Intends to detect potential active shooters, who may include dangerous International Terrorists / Domestic Terrorists / Homegrown Violent Extremists (“Lone Wolves”).
- Assumes individuals are creatures of habit and tend to frequent and/or shop at the same places when buying the same or similar items, rather than purchasing the same thing at multiple merchants or vendors.
 - Looks for purchases at multiple merchants or vendors who sell weapons and/or ammunition over a shorter period of time.
- Looks for “bursts” of potential suspicious purchase activity, especially when activity not seen previously.
 - Run query periodically, using a rolling lookback period of 60 days.
- Focuses on credit / debit card transaction activity with merchant / vendor counterparties.
 - Looks at specific counterparty Merchant Category Classification Codes (MCC Codes) and distinct merchant IDs.
 - MCC Codes are used by credit card companies to classify merchant businesses into market segments and industries, with each merchant / vendor location having a unique merchant ID.
 - No minimum dollar threshold for individual transactions.
 - Uses an iterative feedback loop process to build out and refine the exclusion and inclusion keyword lists (detailed in the next slides).
 - Limitations – Due to a lack of industry identifiers for counterparties for other transaction types, does not look at cash, check, ACH, or wire transactions at this time.
- SARs filed for public safety / law enforcement awareness purposes.
- Alert Example – John Doe makes 5 credit card purchases at 4 different gun shops, plus makes 4 charges at 3 gun ranges, spending \$3,000 on weapons-related transactions over a 5 week period. Doe does not appear to have any previous firearms purchases.

Classification: KeyBank Confidential 

The concern around the use of MCCs to sift through and flag certain purchases on behalf of federal law enforcement is well-documented. For example, in September of 2022, after being petitioned by Amalgamated Bank—an institution that leverages financial power to promote “sustainable organizations, progressive causes, and social justice”¹²⁶—the International Organization for Standardization (ISO) announced its intent to create a separate MCC for the sale of firearms in America with the unabashed support of gun control advocates.¹²⁷ That announcement sparked an outcry from many Americans who opposed ISO’s announcement out of fear that it would be used to track, harass, and limit firearm vendors’ and purchasers’ access to financial services.¹²⁸ As a result of the pressure, the program was reportedly put on pause.¹²⁹ However, the Committee and Select Subcommittee’s investigation has revealed that similar MCCs are already being weaponized against customers by financial institutions in collusion with federal law enforcement.¹³⁰

The KeyBank slide deck also included slides that provided financial institutions with search query logic terms and instructions on how to search through their transactions and accounts in order to “detect potential active shooters, who may include dangerous International Terrorists / Domestic Terrorists / Homegrown Violent Extremists (“Lone Wolves”).”¹³¹ These slides detail how financial institutions can wield MCCs, merchant IDs, and other keyword searches to monitor customer transactions for “suspicious” activity. As the previous slide

¹²⁶ AMALGAMATED BANK, <https://amalgamatedbank.com/who-we-are> (last visited Feb. 28, 2024).

¹²⁷ Andrew Sorkin, *Credit Card Issuers Join the Fight to Limit Mass Shootings*, N.Y. TIMES (Sept. 12, 2022).

¹²⁸ See, e.g., Letter from Rep. Elise Stefanik et. al. to Mr. Alfred F. Kelly, Chief Exec. Officer of Visa, Inc. (Sept. 14, 2022); see also J.D. Tuccille, *Credit Cards ‘Pause’ Efforts to Track Gun Purchases After Pushback*, REASON (Mar. 13, 2023).

¹²⁹ See J.D. Tuccille, *supra* note 128.

¹³⁰ See, e.g., HJCSWFG_0000454.PPTX.

¹³¹ HJCSWFG_0000454.PPTX. at 2.

explains, “MCC Codes are used by credit card companies to classify merchant businesses into market segments and industries, with each merchant / vendor location having a unique merchant ID” and should not use any “minimum dollar threshold for individual transactions.”¹³² In other words, every transaction is assigned an MCC and financial institutions use these codes to search through customers’ financial history for any activity it deems “suspicious.” If it finds a possibly suspicious transaction, it can report that information to federal law enforcement by filing a SAR or similar report without the customer ever knowing about it.¹³³

Active Shooter Detection – Methodology 1 – Keyword EXCLUSION (Broad Focus)

- Transaction Population:** Query for credit / debit card purchases involving any of the following MCC codes:
 - 3484:** Small Arms (includes businesses generally manufacturing small arms and accessories having a bore less than 30 mm)*
 - 3489:** Ordnance and Accessories, Not Elsewhere Classified (includes businesses manufacturing firearms and accessories having a bore more than 30 mm)*
 - 5091:** Sporting and Recreational Goods and Supplies (includes retail ammunition and retail guns sales)*
 - * Not universally recognized MCC code
 - 5099:** Durable Goods, Not Elsewhere Classified
 - 5933:** Pawn Shops
 - 5941:** Sporting Goods Stores (largest sellers of firearms and ammunition)
 - 5999:** Miscellaneous and Specialty Retail Shops (includes firearms and ammunition dealers)
 - 7999:** Recreation Services, Not Elsewhere Classified (includes shooting facilities or shooting ranges)
- Keyword EXCLUSION (Above transactions must EXCLUDE these keywords / Not exhaustive list):**

Amazon	Bowling	Fitness	Laundry	Rod	Tobacco
Anger	Carve	Ford	LawnMower	Scuba	Town
Archery	Card	Football	Lives	Store	Vape
Bait	Carport	Gift Shop	Lodge	Store	Veterinarian
Bandaid	CD	Gift	Lower's	Tab	Video
Bar & Beer	Coffee	Google	Miscellaneous	Smoke	Videos
Barry	Copier	Grain	Miscellaneous	Software	Volleyball
Beagle	Communication	HeatTreat	Music	Software	Wagon
Bike	Drinkery	Heckey	Party	Spirit Manufacturing	Wholesale
BikeRear	DriveTV	HomeDecor	PlayStation	Square	Yoga
Bingo	Dive	Hoops	Includes "Don"	Storage	Zoo
Book	Ebay	Hospital	Pizza	Swim	Zilly
Booker	Engineering	Island	Post	Tackle	
BodySolid	Esurance	Japan	Print	Tap	
BodySoul	Farm	Jewel	Printer	Tap	
Box	Fish	Johnson	Resort	Tennis	
- During the 60-Day Rolling Lookback Period, Query Run Periodically (SME Adjustable Parameters):**
 - Involves 5 or more distinct and different merchants / vendors of the above population set by the customer, AND
 - Aggregate purchase transactions totaling \$2,500 or more from the above MCC codes by the customer, AND
 - Number of transactions at the above MCC codes > 50% of total number of transactions by the customer, AND
 - Aggregate purchase amount at the above MCC codes > 50% of total purchases by the customer.

Classification: KeyCorp Confidential

As the KeyBank slide demonstrates, financial institutions often use MCCs to query and review transactions for potentially suspicious activity. This slideshow directs particular concern to firearm-related purchases, lawful or otherwise, under the guise of detecting DVEs.¹³⁴ It reveals that financial institutions can use special MCCs to identify certain purchases for review, including “3484: Small Arms,” “3489: Ordnance and Accessories, Not Elsewhere Classified (includes businesses manufacturing firearms and accessories having a bore more than 30mm),” “5091: Sporting and Recreational Goods and Supplies (includes retail ammunition and retail guns sales),” “5099: Durable Goods, Not Elsewhere Classified,” “5933: Pawn Shops,” “5941: Sporting Goods Stores (largest sellers of firearms and ammunition),” “5999: Miscellaneous and Specialty Retail Shops (includes firearms and ammunition dealers),” and “7999: Recreation Services, Not Elsewhere Classified (includes shooting facilities or shooting ranges).”¹³⁵

¹³² *Id.*

¹³³ See 31 U.S.C. § 5318(g)(3)(A); see also 12 U.S.C. § 3403(c); 31 C.F.R. § 1020.320(a)(1), (e).

¹³⁴ HJCSWFG_0000454.PPTX, at 3.

¹³⁵ *Id.*; See also KEYBANK, KEY2 PURCHASE MCC,

https://www.key.com/content/dam/kco/documents/businesses_institutions/Key2Purchase_MCC.pdf (last visited Jan. 22, 2024). The Committee and Select Subcommittee note that KeyBank omits use of MCCs 3484, 3489, and 5091 in its publicly available MCC list.

- “recent excessive legal / medical expenses (legal / family status or health challenges)”; and
- whether the individual is unemployed, was “recently fired or laid off,” has “delinquent / excessive debt,” or has “social media posts of concern.”¹³⁸

Of course, none of these transactions standing alone are unlawful—in fact, many are indicative of constitutionally protected political or religious activity.

Active Shooter Detection – Additional Red Flags to Consider

When Investigators are reviewing financial accounts, besides alerted transactions, other factors Investigators may wish to consider:

- Is the alerted transaction activity consistent with previous activity, or has it begun recently?
- Unexplained travel transactions, or unexplained transactions with a high-risk jurisdiction?
- Any recent purchases of counter-surveillance equipment?
- Any recent purchases of covert / secure communications equipment?
 - Virtual private networks (VPNs), online gaming, prepaid phones / calling cards, etc. transactions?
- Any recent rental of storage facilities?
- Other excessive transactions, especially if not consistent with previous activity?
 - Hardware, beauty supply, auto parts, electronics, machinist / engineering, gym / martial arts, political donations / materials, religious donations / materials, work uniforms, etc.
- Excessive ATM, Prepaid Cards, Person-to-Person (P2P), or Virtual Currency transactions?
- Any recent life insurance purchases and/or bank account closures?
- Any life stressor indicators?
 - Recent excessive legal / medical expenses (legal / family status or health challenges)?
 - No payroll deposits? Unemployed? Recently fired or laid off?
 - Delinquent / excessive debt?
- Any social media posts of concern?

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Similarly, on January 16, 2021, FinCEN circulated additional slides prepared by the Global Financial Crimes Division (GFCD) at MUFG Bank, the largest bank of Japan, to other financial institutions and that included a “list of subjects of interest and high-level typologies.”¹³⁹ That slide revealed typologies for review as they relate to the events of “1/6” and included a broad scope of credit, debit, and ATM transactions, suggesting a look-back period ranging from November 3, 2020, to January 12, 2021.¹⁴⁰ These typologies include otherwise lawful activity such as “use of business cards (not held by tactical or security firms) for the purchase of arms / ammo,” “transfers to GiveSendGo or other crowdsourcing sites,” “purchasing of gift cards; Use of debit cards for Crypto,” and “transactions in or near capitols or state capitols at/around 1/6.”¹⁴¹

¹³⁸ HJCSWFG_0000454.PPTX. at 5.

¹³⁹ HJCSWFG_0000003 (email from FinCEN distributing slide to KeyBank, Standard Chartered, Western Union, Wells Fargo, PayPal, Citibank, Bank of America, Santander, HSBC, MUFG, Union Bank, and JPMorgan Chase); see also HJCSWFG_0000007.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

GFCD Intelligence & Analytics
Data Insights and Analytics
4
100% Cardholder
Network Information

Typologies for review as they relate to the events of 1/6/20

Scope: Transactions pulled from 1/3 – 1/12: ATM, CREDIT, DEBIT, with expanded reviews where needed.

#	Typology
	MCC Codes that, when taken together, demonstrate travel: 1 ox. hotel, rental car, & gas, AND Mileage increasingly further from cardholder's home
2	Cardholder purchases at gun-ammo, sporting goods stores, etc., that demonstrate increases in volume, value, or velocity above average and/or a high % relative to cardholder's available credit.
	Transactions that contain keyword list matches: a) potential target events, locations, or individuals b) names:
3	i. of those arrested at demonstrations / riots ii. of key leadership in organizations c) code terms and calls to action d) precursor elements to IEDs and firearms
4	Transactions in or near capitols or state capitols at/around 1/6
5	Multiple cards used by one person, for the purchasing of fire arms/ammo etc.
6	Use of business cards (not held by tactical or security firms) for the purchase of arms / ammo
9	Transfers to GiveSendGo or other crowdsourcing sites
10	Purchasing of gift cards; Use of debit cards for Crypto
11	Over/under invoicing for merchant codes at gun clubs with other vendor services (i.e., large transactions for an individual at a snack bar)



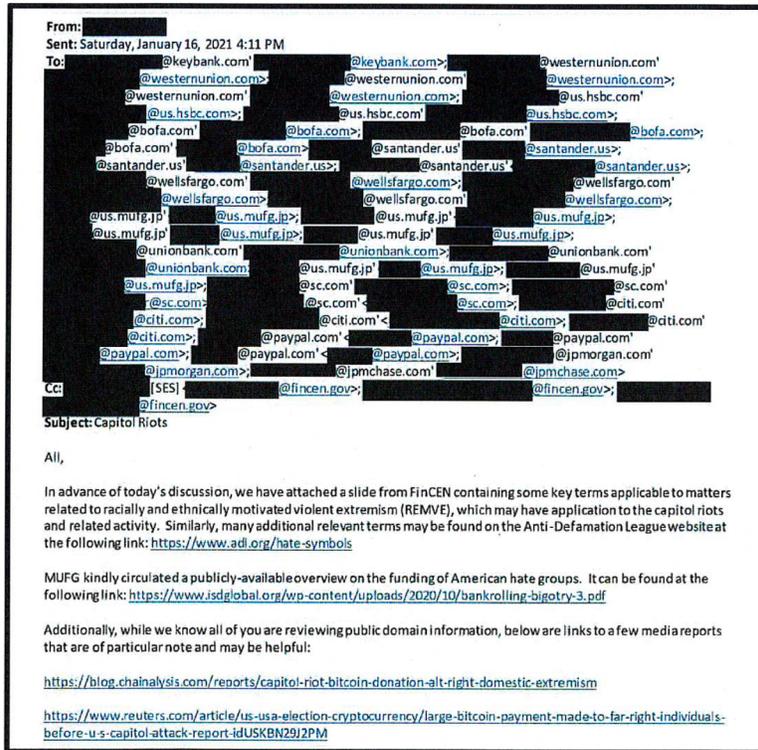
NOTE: DIA plans on looking at these typologies holistically, that is no single hit may warrant escalation but more than one could.
DIA plans on, where possible, pulling transaction details for Credit, ATM, and DEBIT card activity.
DIA will look to sort for these typologies via in person vs. online purchases
The condition and contents of data may dictate that DIA will have to alter these typologies, abandon these typologies, and / or adopt new typologies

Consequently, account information and transactions meeting any of the eleven “typology” criteria may have been flagged and shared with federal law enforcement as being “suspicious.” The slide is another clear example that these typologies were not necessarily evidence of criminal activity, but that were nonetheless scrutinized and potentially shared with federal law enforcement. Unfortunately, the use of MCC search parameters were not the only kinds of typologies and transactions that FinCEN was interested in. FinCEN also circulated politicized materials to financial institutions for monitoring their databases for certain “hate groups” and other “key terms.”¹⁴²

¹⁴² HJCSWFG_0000004 (email from FinCEN sharing hyperlinks to KeyBank, Standard Chartered, Western Union, Wells Fargo, PayPal, Citibank, Bank of America, Santander, HSBC, MUFG, Union Bank, and JPMorgan Chase).

b. FinCEN shared a “hate symbols” database and a report on the funding of American “hate groups” to financial institutions.

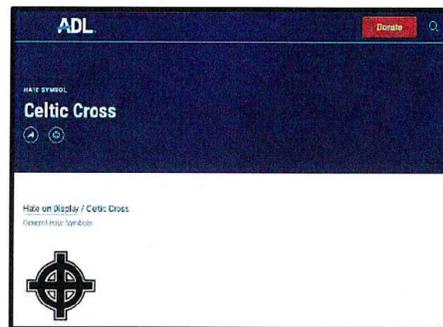
On January 16, 2021, FinCEN circulated another email to financial institutions “in advance of today’s discussion.”¹⁴³ That email included links to “key terms applicable to matters related to racially and ethnically motivated violent extremism, which may have application to the capitol riots and related activity.”¹⁴⁴ In addition, the email included a hyperlink to “relevant terms” from the Anti-Defamation League website and a hyperlink to a “publicly-available overview on the funding of American hate groups.”¹⁴⁵ The first hyperlink was to a database of “Hate Symbols” indexed by the Anti-Defamation League (ADL)—a notorious anti-conservative activist group—and the second was to a report authored by the Institute for Strategic Dialogue



¹⁴³ *Id.*
¹⁴⁴ *Id.*
¹⁴⁵ *Id.*

(ISD) titled “Bankrolling Bigotry: An Overview of the Online Funding Strategies of American Hate Groups.”¹⁴⁶

In recent years, ADL has become significantly more left-wing and taken an aggressively anti-conservative stance. For example, the “Hate Symbols” database maintained by ADL and circulated by FinCEN to financial institutions treats “Anti-Antifa Images,” the “Celtic Cross,” the “Okay Hand Gesture,” “Pepe the Frog,” and “White Lives Matter,” as hate symbols.¹⁴⁷ It should alarm Americans that FinCEN approved of and distributed a link to a database that considers symbols of faith such as the Christian Celtic Cross and other images opposing Antifa—a violent left-wing anarchist group—as hate symbols. This practice is reminiscent of the FBI’s disdain for “Radical Traditionalist Catholics,” and the FBI’s reliance on the Southern Poverty Law Center—another far-left activist group—as an authoritative source on the Catholic Church.¹⁴⁸



FinCEN also circulated a hyperlink to a report authored by the ISD. The ISD is a left-wing organization that holds itself out as an “independent” monitor of “disinformation” that promotes the censorship of speech it decries as false or extreme.¹⁴⁹ FinCEN’s distribution of the ISD report amounts to an approval of its content, its methods, and its conclusions. Such an endorsement is concerning because the ISD report labels and demonizes various right-of-center groups in America as “hate groups.”¹⁵⁰ For example, the ISD’s report incorrectly characterizes several conservative groups such as the Center for Immigration Studies, Numbers USA, the

¹⁴⁶ ADL, HATE ON DISPLAY™ HATE SYMBOLS DATABASE, <https://www.adl.org/resources/hate-symbols/search> (last visited Feb. 28, 2024); Institute for Strategic Dialogue, *Bankrolling Bigotry: An Overview of the Online Funding Strategies of American Hate Groups*, ISD at 9 (Oct. 27, 2020).

¹⁴⁷ ADL, HATE ON DISPLAY™ HATE SYMBOLS DATABASE, <https://www.adl.org/resources/hate-symbols/search> (last visited Feb. 28, 2024).

¹⁴⁸ See STAFF OF H. COMM. ON THE JUDICIARY, 118TH CONG., REP. ON THE FBI’S BREACH OF RELIGIOUS FREEDOM: THE WEAPONIZATION OF LAW ENFORCEMENT AGAINST CATHOLIC AMERICANS 5 (Comm. Print 2023).

¹⁴⁹ Institute for Strategic Dialogue, <https://www.isdglobal.org/about/> (last visited Feb. 28, 2024); see also Letter from Rep. Michael T. McCaul, Chairman, H. Foreign Aff. Comm., to Hon. Antony J. Blinken, Secretary of St. (May 1, 2023).

¹⁵⁰ Institute for Strategic Dialogue, *Bankrolling Bigotry: An Overview of the Online Funding Strategies of American Hate Groups*, ISD (Oct. 27, 2020).

Alliance Defending Freedom, along with several others, as “hate groups.”¹⁵¹ In fact, the ISD’s report draws a false equivalency between certain conservative civil society groups and the American Nazi Party and the Knights of the Ku Klux Klan, suggesting FinCEN views them equally.¹⁵² Still, FinCEN circulated the ISD report to some of the largest financial institutions in the world, including the very financial institutions that are likely responsible for providing financial services to many of the listed “hate groups,” without regard for the chilling effect it would have on protected speech and its potential to be weaponized against the groups by financial institutions.

¹⁵¹ *Id.* at 9.

¹⁵² *Id.*

Bankrolling Bigotry: An Overview of the Online Funding Strategies of American Hate Groups 9

Table 2 Overview of hate groups studied

Anti-immigrant	Anti-Muslim	White supremacist
<p>Organisations</p> <ul style="list-style-type: none"> Center for Immigration Studies Dustin Inman Society Federation for American Immigration Reform Numbers USA Oregonians for Immigration Reform ProEnglish The Remembrance Project We The People Rising 	<p>Organisations</p> <ul style="list-style-type: none"> Act for America American Freedom Defense Initiative Center for Security Policy Clarion Project David Horowitz Freedom Center The United West <p>Militia or street protest</p> <p>Organisations</p> <ul style="list-style-type: none"> American Patriots USA American Revolution 2.0 Patriot Prayer Patriot Wave Proud Boys Rise Above Movement Washington Three Percenters Oath Keepers <p>White nationalist</p> <p>Organisations</p> <ul style="list-style-type: none"> America First Students American Freedom Party American Guard Groyperz – Nick Fuentes New Jersey European Heritage Association Patriot Front VDARE Identity Dixie League of the South 	<p>Organisations</p> <ul style="list-style-type: none"> American Identity Movement (formerly Identity Evropa) American Nazi Party American Renaissance, website of New Century Foundation Atomwaffen Division Bowl Patrol or Bowl Gang Feuerkrieg Division (International) Keystone United Knights of the Ku Klux Klan Legion of St. Ambrose National Alliance National Socialist Movement National Justice Party Northwest Front NSC 131 Order 15 Shield Wall Network The Base Vorherrschaft Division Kingdom Identity Ministries <p>Black supremacist</p> <p>Organisations</p> <ul style="list-style-type: none"> Nation of Islam <p>Holocaust denial</p> <p>Organisations</p> <ul style="list-style-type: none"> Institute for Historical Review <p>Misogynist</p> <p>Organisations</p> <ul style="list-style-type: none"> A Voice for Men

GDI Global Disinformation Database | ISD | Tracking online disinformation and propaganda

C. FinCEN used financial institutions to monitor and report on accounts involved in crowdfunding for conservative events.

On January 18, 2021, FinCEN circulated a “list of crowdfunding sites” that “[p]eople have been observed using to post an event and sell tickets including bus tickets to the

casting the selling of “bus tickets to the demonstrations” as suspicious without articulating any basis for believing such demonstrations might be unlawful.¹⁵⁶ However, the weaponization of crowdfunding against conservative movements is not new.¹⁵⁷ For example, GoFundMe removed fundraisers associated with the “Freedom Convoy,” a group protesting COVID-19 mandates internationally, and removed fundraisers on its platform supporting the legal defense of Kyle Rittenhouse while leaving fundraisers for Antifa militants and Black Lives Matter rioters untouched on the platform.¹⁵⁸ FinCEN’s incursion into the crowdfunding space represents a trend in the wrong direction and a threat to American civil liberties.

D. FinCEN circulated a KeyBank-created “Appendix” of “Domestic Extremist Groups” to other financial institutions.

FinCEN also distributed an additional slide, prepared by another financial institution, via email to other financial institutions.¹⁵⁹ The slide is an “Appendix” that labels certain groups as “Domestic Extremist,” including “American Border Patrol,” “Anti-Abortion (violent),” “Anti-Government,” the “Center for Immigration Studies,” and the “Center for Security Policy,” among many others.¹⁶⁰ By sharing this slide prepared by KeyBank, FinCEN endorsed a listing of groups it considered “domestic extremist.”

CONCLUSION

The decline of cash and the rise of digital payments and e-commerce platforms has provided financial institutions with more insight and influence over the financial system than ever before. In fact, very little financial activity occurs beyond the purview of modern financial institutions. As a result, these financial institutions often act as arms of federal law enforcement as they work in coordination with federal law enforcement to identify what transactions and other information is “suspicious” enough to be reported. Other times, law enforcement uses backchannel discussions to commandeer financial institutions’ databases in order to collect Americans’ data and build a profile of any “typology” it deems “suspicious.” When working together, these two parties wield a tremendous amount of influence and power over the American financial system with almost no oversight of their partnership and no possibility for recourse when that system is abused at the cost of victims who have been wrongfully targeted by the secret information-sharing network.

As this investigation shows, greater scrutiny of the partnership between federal law enforcement and financial institutions is warranted. When “Big Banks” and “Big Government” collude to violate American civil liberties, Congress has a responsibility to step in. Thanks to the brave whistleblower testimony that brought it to light, what started as an investigation into alarming information-sharing between Bank of America and the FBI without legal process has

¹⁵⁶ *Id.*

¹⁵⁷ See, e.g., Ryan King, *Five times GoFundMe shut down conservative fundraisers*, WASH. EXAMINER (Feb. 7, 2022).

¹⁵⁸ See Douglas Blair, *GoFundMe’s Sordid History of Censorship of Conservative Causes*, DAILY SIGNAL (Feb. 9, 2022).

¹⁵⁹ HJCSWFG_0000549 (email from FinCEN sharing slide with KeyBank, Standard Chartered, Western Union, Wells Fargo, PayPal, Citibank, Bank of America, Santander, HSBC, MUFG, Union Bank, and JPMorgan Chase).

¹⁶⁰ HJCSWFG_0000550.PPTX.

exposed what appears to be an even greater state of financial surveillance and weaponization. From targeting customers and transactions that shop at Bass Pro Shop or Cabela's using MCCs, to profiling customers with "typologies" that cast the purchase of religious texts and other donations to organizations that promote "radicalism" as indicative of "Homegrown Violent Extremism," federal law enforcement has overstepped its bounds.

As this investigation continues, the Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government will continue to conduct oversight of the state of financial surveillance, targeting, and the vulnerabilities of Americans' data. Secret information-sharing portals and backchannel discussions outside the normal course of legal process pose serious risks to the nation. Larger questions remain regarding how the information shared between federal law enforcement and financial institutions was acted upon, and the ongoing extent of the financial surveillance. The Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government remain committed to answering those questions and upholding the civil liberties of Americans.

Appendix

Date: Friday, January 29 2021 08:31 PM
 Subject: [EXTERNAL] Capitol Riots Investigations
 From: [REDACTED]@fbi.gov>
 [REDACTED]@pmchase.com> [REDACTED]@eli.com>
 [REDACTED]@paypal.com> [REDACTED]@wellsfargo.com>
 To: [REDACTED]@usbc.com> [REDACTED]@sc.com>
 [REDACTED]@bofa.com> [REDACTED]@usbank.com>
 [REDACTED]@barclays.com> [REDACTED]@pmchase.com>
 [REDACTED]@schwab.com>
 CC: [REDACTED]@fbi.gov>

Good afternoon all,

For the past several months I have been working at our Washington Field Office under [REDACTED] who I believe most of you met while [REDACTED] was serving as the [REDACTED]. As the dust begins to settle here after the events of January 6th, [REDACTED] would like to hold a call with the goal of identifying the best approach to information sharing, both strategic and operational, related to the Capitol Riots. In the hopes of moving forward together quickly, we have set aside time at 2:30pm on Tuesday, February 2nd for this discussion. I will be sending out dial-in information first thing Monday and hope you, or someone from your team, is available to participate.

Thanks and have a great weekend!

[REDACTED]
 [REDACTED]
 Special Assistant to [REDACTED]
 Federal Bureau of Investigation
 Washington Field Office
 [REDACTED]

FLP:GREEN



CROSS-SECTOR

17 January 2020

LIR 210117002

Domestic Violent Extremists Likely Emboldened in Aftermath of Capitol Breach

References in this LIR to any specific commercial product, process or service or the use of any corporate name herein is for informational purposes only and does not constitute an endorsement, recommendation, or disparagement of that product, process, service or corporation on behalf of the FBI.

The Federal Bureau of Investigation (FBI), Department of Homeland Security (DHS), and National Counterterrorism Center (NCTC) prepared this LIR to alert private sector partners that the 6 January 2021 violent breach by suspected domestic violent extremists (DVEs) into the U.S. Capitol Building may serve as a driver for a diverse set of DVEs.

DVEs may exploit future lawful protests, rallies, demonstrations, and other gatherings to carry out ideologically motivated violence and criminal activity. The death of an individual directly engaged in the U.S. Capitol breach may serve to galvanize DVEs and increase collaboration between such diverse DVE groups.¹ These DVEs may also perceive the event as a step toward achieving their initiatives and consider the death of a perceived like-minded individual as an act of martyrdom.²

The belief in the existence of global or "deep state" actors who work to manipulate various social, political, and/or economic conditions of the United States likely serves as a driver of some DVE violence. Some rioters and DVEs' view the 6 January event as a success and may exploit follow-on lawful gatherings; this perceived success may inspire some DVEs to target racial, ethnic, or religious minorities and institutions, the media, law enforcement, and government officials and buildings.

- An individual who traveled to Washington, D.C. engaged in lawful protests, illegally entered the U.S. Capitol Building, and was shot and killed by law enforcement personnel.
- Some participants at the Capitol displayed insignias used or adopted by a range of DVEs. Nooses and plastic restraints were carried or stationed at or near the Capitol by some rioters, possibly to demonstrate their intent to cause harm to government officials.
- During rioting on the Capitol grounds, individuals pursued and threatened journalists, according to open-source reporting. Rioters destroyed or stole cameras and other media equipment outside the Capitol, and the phrase, "Murder the media," was found scratched into a door within the Capitol.

¹ The information in this LIR is provided to inform law enforcement of the referenced narratives and theories, which may play in mobilizing criminal actors and DVEs to violence. Generating, accessing, discussing, or otherwise interacting with content related to these theories, without engaging in violence or other criminal activity, is protected by the First Amendment. The FBI does not investigate, collect, or maintain information on U.S. persons solely for the purpose of monitoring First Amendment-protected activities.

² The perception that deaths of like-minded individuals at the hands of law enforcement were unjust has historically been a significant driver for DVEs. DVEs have seized on the deaths of two U.S. persons Viski and Samuel Weaver at Ruby Ridge, Idaho in 1992; U.S. persons at the Branch Davidians compound at Waco, Texas in 1993; and U.S. person Duncan Lemp in 2020 to justify threats against law enforcement and government officials.

FLP:GREEN

E.L.P. GREEN



DVEs May Target Elected Officials and Government Buildings Following Political Shifts

Perceptions of fraud surrounding the outcome of the General Election and the change in control of the Presidency and Senate—when combined with long-standing DVE drivers such as perceived government or law enforcement overreach, and the anticipation of legislation perceived to oppose or threaten their beliefs—may lead to an increase in the DVE threat.

Narratives surrounding the perceived success of the breach of the U.S. Capitol will likely lead to an increased DVE threat towards federal, state, and local governments across the United States, particularly in the time period surrounding the 20 January Presidential Inauguration. The targeting of government buildings and officials is consistent with observed activity in 2020, when armed individuals, including DVEs, threatened elected officials and occupied state government buildings. Since the 6 January event, online rhetoric regarding the 20 January Presidential Inauguration has increased, with some calling for unspecified “justice” for the 6 January fatal shooting by law enforcement of an individual at the Capitol Building, and another posting that “many” armed individuals would return on 19 January, according to open-source reporting. The recent removal efforts by social media platforms used by DVEs may push some to revert to other platforms they perceive as more secure.

Range of DVE Actors Likely to Pose Increasing Threat at Lawful Protests, Rallies, Demonstrations, etc.

Throughout 2020, DVEs with differing goals and perspectives exploited such events to promote, organize, conspire, and plot against ideological opponents and other targets. DVEs’ efforts to engage in violence at lawful gatherings will probably increase throughout 2021, as some DVEs perceive increased socio-political pressures. Such perceived pressures may stem from, but not be limited to, one or more of the following factors:

- The potential for shifts in various policies many DVEs may perceive to oppose or threaten their ideological goals and agendas or feed into existing narratives many DVEs subscribe to regarding the U.S. government’s exercise of power, influence, and initiatives: possibly including firearm legislation, the easing of immigration restrictions, and new limits on the use of public land.
- Ongoing narratives by DVEs that the 2020 General Election was illegitimate, or fraudulent, and the subsequent belief its results should be contested or unrecognized.
- Some DVEs’ discontent with renewed measures to mitigate the spread of COVID-19, the ordered dissemination of COVID-19 vaccinations, and the efficacy and/or safety of COVID-19 vaccinations.

The FBI, DHS, and NCTC remain concerned about the potential for a loosely organized, sustained, and significant DVE population mobilizing to violence based on social media calls to target government infrastructure or officials. The shared narrative of election fraud and the opposition to the change in control of the executive and legislative branches of the federal government may lead some individuals to adopt the belief that there is no political solution to address their grievances and violent action is necessary. Additionally, in-person engagement between DVEs of differing ideological goals during the Capitol breach likely served to foster connections, which may increase DVEs’ willingness, capability, and motivation to attack and undermine a government they view as illegitimate.³

³ Targeted attacks on identified elected and party officials based upon their political opinions would be similar to attacks observed in the last five years including the 2017 attempted assassination of Republican members of Congress on a baseball field in Virginia, or two assassinations by violent extremists espousing a belief in white supremacy targeting a British member of Parliament, and a German political party official.

E.L.P. GREEN

TLP: GREEN



In the near term, DVEs could exploit upcoming events to engage in or justify violence, including events attended by MVEs and “boogaloo”⁴ adherents scheduled nationally from 16 to 20 January; the 20 January Presidential Inauguration and associated events in Washington, D.C.; and the impeachment and possible departure of the 45th President prior to the end of his term. The “boogaloo” is a concept most commonly used to reference an impending second civil war or insurgency against the U.S. Government. Calls for revolution may especially resonate with militia violent extremists (MVEs), who often justify violence based on their belief that they are guardians of the Constitution and the legacies of the American Revolution. While they may not necessarily share the partisan views of those who engaged in the 6 January breach, MVEs and other DVEs who adhere to the “boogaloo” concept and seek a politically motivated civil war, and racially motivated violent extremists who seek a race war, may exploit the aftermath of the Capitol breach in an attempt to create conflict in the United States.

If companies witness any suspicious activities related to potential domestic violent extremism, please report it to your FBI Private Sector Coordinator at your [local FBI Field Office](#): <https://www.fbi.gov/contact-us/field-offices>.

OPS’s Information Sharing and Analysis Unit disseminated this LIR; please direct any requests and questions to your FBI Private Sector Coordinator at your [local FBI Field Office](#): <https://www.fbi.gov/contact-us/field-offices>.

Traffic Light Protocol (TLP) Definitions

Color	When should it be used?	How may it be shared?
 Not for disclosure, restricted to participants only.	Sources may use TLP-RED when information cannot be effectively acted upon by additional parties, and could lead to impacts on a party's privacy, reputation, or operations if misused.	Recipients may not share TLP-RED information with any parties outside of the specific exchange, meeting, or conversation in which it was originally disclosed. In the context of a meeting, for example, TLP-RED information is limited to those present at the meeting. In most circumstances, TLP-RED should be exchanged verbally or in person.
 Limited disclosure, restricted to participants' organizations.	Sources may use TLP-AMBER when information requires support to be effectively acted upon, yet carries risks to privacy, reputation, or operations if shared outside of the organizations involved.	Recipients may only share TLP-AMBER information with members of their own organization, and with clients or customers who need to know the information to protect themselves or prevent further harm. Sources are at liberty to specify additional intended limits of the sharing; these must be adhered to.
 Limited disclosure, restricted to the community.	Sources may use TLP-GREEN when information is useful for the awareness of all participating organizations as well as with peers within the broader community or sector.	Recipients may share TLP-GREEN information with peers and partner organizations within their sector or community, but not via publicly accessible channels. Information in this category can be circulated widely within a particular community. TLP-GREEN information may not be released outside of the community.
 Disclosure is not limited.	Sources may use TLP-WHITE when information carries minimal or no foreseeable risk of misuse, in accordance with applicable rules and procedures for public release.	Subject to standard copyright rules, TLP-WHITE information may be distributed without restriction.

⁴ According to open-source research, the original boogaloo meme references the 1984 film, *Breakin' 2: Electric Boogaloo*. Mainstream culture adopted the phrase “electric boogaloo” to comment on follow-on or repeat events in pop- and political-culture, such as re-elections. MVEs use the boogaloo derivative of the phrase to refer to a second Civil War, i.e. American Civil War 2: Electric Boogaloo. Proponents cultivated the meme by sharing images, videos, and rhetoric. “Big igloo,” “Big luau,” “Boog Bois,” “Boojahideen,” and other associated word-play in addition to imagery such as igloos, Hawaiian shirts, and leis, are used as coded references to the larger boogaloo phenomenon on- and offline.

TLP: GREEN

From: [REDACTED] (FBI) [REDACTED]@foi.gov
Sent: 1/15/2021 9:56:49 AM
To: [REDACTED]@bofa.com; [REDACTED]@bofa.com
Subject: upcoming SAR product idea/brainstorming and check-in with you both

[REDACTED]

Ahead of next week's inauguration, I wanted to touch base on a couple things.

If either or both of you have time this morning to discuss SARs and a couple ideas, that would be great.

I will be on my cell this morning.

[REDACTED]

From: [REDACTED]@fbi.gov
Sent: 1/15/2021 12:40:26 PM
To: [REDACTED]@bofa.com; [REDACTED]@bofa.com
Subject: Re: upcoming SAR product idea/brainstorming and check-in with you both

[REDACTED]

As always, thanks for the very quick communication/response over the phone this morning.

To recap our morning-call, we [FBI] are prepared to action [immediately] the following thresholds:

- o CTD/SPES/SEU is interested in all financial relationships that meet the following thresholds:
 - Customers confirmed as transacting, either through bank account [debit card] or credit card, Washington D.C. purchases between 1/5/21 and 1/6/21, with the additional [identifying] targeting thresholds:
 - Purchases made for hotel/airbnb RSVPs in the DMV area [the day before and during Inauguration Day] -----since 1/6/21.
 - ANY historical purchase [going back 6 months generally, for weapons or weapons related-vendor purchases].
 - Secondly, purchases made for returns to Washington, D.C. and the surrounding DMV area:
 - With Airline travel to DMV area for Inauguration Day
 - With no identified airline purchases for the DMV.**
- ** - SEU intends to capture, with its FI-partner concurrence, all customers who might be more strategic in carrying out attacks related to CTD interests; travel with weapons by vehicle and [not by] air, given the current threat and aftermath of the 6 Jan Capitol building incidents. The intention by SEU is to identify all potential networks of threats vs. individual threats to Inauguration Day and beyond.

[REDACTED]

[REDACTED]

From: [REDACTED] (FBI)
Sent: Friday, January 15, 2021 9:56 AM
To: [REDACTED]@bofa.com; [REDACTED]@bofa.com
Subject: upcoming SAR product idea/brainstorming and check-in with you both

[REDACTED]

Ahead of next week's inauguration, I wanted to touch base on a couple things.

From: [REDACTED]@bofa.com]
Sent: 1/17/2021 7:54:23 PM
To: [REDACTED]@fbi.gov; [REDACTED]@fbi.gov]
CC: [REDACTED]@bofa.com; [REDACTED]@bofa.com]
Subject: RE: [SecMail:] secmail:RE: Follow-up

[REDACTED] -- you should have an email from [REDACTED]@bofa.com with our filing on the parameters you discussed with [REDACTED] last week.

Thanks,
[REDACTED]



From: [REDACTED]@fbi.gov [mailto:[REDACTED]@fbi.gov]
Sent: Saturday, January 16, 2021 11:26 AM
To: [REDACTED]@bofa.com>
Cc: [REDACTED]@bofa.com>; [REDACTED]@bofa.com>; [REDACTED]@fbi.gov
Subject: RE: secmail:RE: Follow-up

[REDACTED]

Great. Thanks. I will run with the info.

[REDACTED]

From: [REDACTED]
Sent: Sat, 16 Jan 2021 15:16:38 +0000
To: [REDACTED] (FBI)
Cc: [REDACTED]
Subject: Follow-up

Hi [REDACTED]

Following up from our conversation yesterday morning, we are doing some work around the parameters we discussed and should have something out before the end of the weekend.

To: [REDACTED]@keybank.com; [REDACTED]@sc.com; [REDACTED]@sc.com; [REDACTED]@westernunion.com; [REDACTED]@wellsfargo.com; [REDACTED]@wellsfargo.com; [REDACTED]@wellsfargo.com; [REDACTED]@paypal.com; [REDACTED]@paypal.com; [REDACTED]@paypal.com; [REDACTED]@citi.com; [REDACTED]@citi.com; [REDACTED]@bofa.com; [REDACTED]@bofa.com; [REDACTED]@santander.us; [REDACTED]@santander.us; [REDACTED]@us.hsbc.com; [REDACTED]@jpmorgan.com; [REDACTED]@us.mufg.jp; [REDACTED]@us.mufg.jp; [REDACTED]@wellsfargo.com; [REDACTED]@santander.us; [REDACTED]@us.mufg.jp; [REDACTED]@wellsfargo.com; [REDACTED]@citi.com; [REDACTED]@bofa.com; [REDACTED]@us.hsbc.com; [REDACTED]@fincen.gov; [REDACTED]@fincen.gov; [REDACTED]@fincen.gov; [REDACTED]@fincen.gov]

From: [REDACTED]@fincen.gov
Sent: Fri 1/15/2021 4:00:25 PM (UTC-05:00)
Subject: Compiled typologies in advance of 4:30 call
[Jan 15 2021 compiled typologies.docx](#)
[KeyBank Query Logic for Active Shooters v 01-15-2021.pptx](#)

All, in advance of the 4:30 call, please find attached Indicators shared by two institutions, as well as indicators developed from prior FinCEN analysis on lone actors/homegrown violent extremists.

Talk to you shortly,

[REDACTED]

Bank Statements

One of the things we've done is search Zelle payment messages for indications of involvement in the riots or potential violence. Here are the key words we used below to pull the data. [...] from our initial analysis "Storm the", "Capitol", "white power" and "Antifa" seem to be yielding the best results.

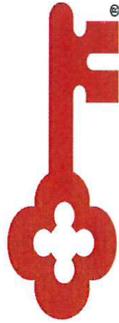
%PRESIDENT%
 %PREZ%
 %TRUMP%
 %KAMALA%
 %BIDEN%
 %DIE%
 %KILL%
 %SHOOT%
 %BLOW%
 %GUN%
 %DEATH%
 %MURDER%
 KRAKEN
 ANTIFA
 LAST SONS
 OATH KEEPER
 WHITE POWER
 CAPITOL
 STORM THE
 CIVIL WAR
 GROYPER ARMY
 CAMP AUSCHWITZ
 AMERICA FIRST
 THREEPEERS
 MILITIA
 CAPITAL
 MAGA
 PATRIOT
 BOOGALOO
 PROUD B%
 CIVIL WAR
 PELOSI
 PENCE
 Schumer

Items Available for Homegrown Violent Extremism Indicators (Developed from a Threat Intelligence Analysis)

- ✓ Long periods of account inactivity, or show normal usage, but in the months or years preceding an attack, a sudden surge or change in activity type.
- ✓ Sudden purchase of firearms, firearm parts and accessories, ammunition, tactical gear at outdoor supply stores, and purchases at shooting ranges not commensurate with previously known customer behavior.

- ✓ Frequent cash deposits of unknown origin, followed by debit or credit card purchases at retailers not commensurate with previously known customer purchase activity.
- ✓ Frequent ATM withdrawals and wire transfers with no apparent economic or business purpose.
- ✓ Sudden account closings, asset liquidations, and disbursements in days or weeks leading up to attacks.
- ✓ Life insurance policy purchases not commensurate with typical behavior for the type of account holder.
- ✓ Transportation charges, such as bus tickets, rental cars, or plane tickets, for travel to areas with no apparent purpose or not commensurate with the previous travel history of the customer, for example, travel to high-risk areas or indirect flightpaths for no apparent legitimate reason.
- ✓ Purchases that appear excessive or unusual for hobbyist or other legitimate use.
- ✓ The purchase of pre-cursor chemicals, fireworks, or potential bomb-making equipment, for example, ammonium nitrate, citric acid, aluminum powder, triacetone triperoxide [TATP], potassium nitrate, red iron oxide, tannerite, lengths of piping, BB pellets, cell phones, and others.
- ✓ Purchases of international calling cards not commensurate with previously known customer behavior.
- ✓ The purchase of books (including religious texts) and subscriptions to other media containing extremist views.
- ✓ Donations to organizations known to promote radicalism.

KeyBank's Query Logic for Active Shooters



SVP – Compliance Director - Financial Intelligence
[Redacted]@keybank.com

Active Shooter Detection – Intent of Query

- Intends to detect potential active shooters, who may include dangerous International Terrorists / Domestic Terrorists / Homegrown Violent Extremists (“Lone Wolves”).
- Assumes individuals are creatures of habit and tend to frequent and/or shop at the same places when buying the same or similar items, rather than purchasing the same thing at multiple merchants or vendors.
 - Looks for purchases at multiple merchants or vendors who sell weapons and/or ammunition over a shorter period of time.
- Looks for “bursts” of potential suspicious purchase activity, especially when activity not seen previously.
 - Run query periodically, using a rolling lookback period of 60 days.
- Focuses on credit / debit card transaction activity with merchant / vendor counterparties.
 - Looks at specific counterparty Merchant Category Classification Codes (MCC Codes) and distinct merchant IDs.
 - MCC Codes are used by credit card companies to classify merchant businesses into market segments and industries, with each merchant / vendor location having a unique merchant ID.
 - No minimum dollar threshold for individual transactions.
 - Uses an iterative feedback loop process to build out and refine the exclusion and inclusion keyword lists (detailed in the next slides).
 - Limitations – Due to a lack of industry identifiers for counterparties for other transaction types, does not look at cash, check, ACH, or wire transactions at this time.
- SARs filed for public safety / law enforcement awareness purposes.
- Alert Example – John Doe makes 5 credit card purchases at 4 different gun shops, plus makes 4 charges at 3 gun ranges, spending \$3,000 on weapons-related transactions over a 5 week period. Doe does not appear to have any previous firearms purchases.



Active Shooter Detection – Methodology 1 – Keyword EXCLUSION (Broad Focus)

- Transaction Population: Query for credit / debit card purchases involving any of the following MCC codes:
 - 3484: Small Arms (includes businesses generally manufacturing small arms and accessories having a bore less than 30 mm)*
 - 3489: Ordnance and Accessories, Not Elsewhere Classified (includes businesses manufacturing firearms and accessories having a bore more than 30 mm)*
 - 5091: Sporting and Recreational Goods and Supplies (includes retail ammunition and retail guns sales)*
- * Not universally recognized MCC code
- 5099: Durable Goods, Not Elsewhere Classified
- 5933: Pawn Shops
- 5941: Sporting Goods Stores (largest sellers of firearms and ammunition)
- 5992: Miscellaneous and Specialty Retail Shops (includes firearms and ammunition dealers)
- 7999: Recreation Services, Not Elsewhere Classified (includes shooting facilities or shooting ranges)

Keyword EXCLUSION (Above transactions must EXCLUDE these keywords / Not exhaustive list):

Amazon	Bowling	Fitness	Laundry	Rod
Angler	Canoe	Food	Life/Vintage	Scuba
Archery	Card	Football	Linens	Shoe
Bait	Carquest	Gift Shop	Lodge	Vape
Baseball	Cig	Golf	Lowe's	Victor/seacet
Bath & Body	Coffee	Google	Mercant (exact)	V/famih
Beauty	Comic	Graze	Mitplace	Volleyball
Bicycle	Communication	Harris Teller	Music	Water
Blke	Danbury Mint	Hockey	Party	Spirit Manufacturing
Billy Beaz	DirectTV	Home Depot	PayPal (unless it also includes "Gun")	Square (exact)
Bingo	Dive	Hoops	Pizza	Storage
Boat	Ebay	Hospital	Pool	Swim
Body	Engineering	Indeed	Print	Table
Body-Solid	Esrow.com	Jewel	Quilver	Tan
Boutique	Farm	Johnson Hth	Resort	Tea
Bow	Fish			Tennis
				Tobacco
				Tools
				Vapor
				Victor/seacet
				V/famih
				Volleyball
				Water
				Spirit Manufacturing
				Square (exact)
				Storage
				Swim
				Table
				Tan
				Tea
				Tennis

- During the 60-Day Rolling Lookback Period, Query Run Periodically (SME Adjustable Parameters):
 - Involves 5 or more distinct and different merchants / vendors of the above population set by the customer, AND
 - Aggregate purchase transactions totaling \$2,500 or more from the above MCC codes by the customer, AND
 - Number of transactions at the above MCC codes > 50% of total number of transactions by the customer, AND
 - Aggregate purchase amount at the above MCC codes > 50% of total purchases by the customer.



Active Shooter Detection – Methodology 2 – Keyword Inclusion (Narrow Focus)

- Transaction Population: Query for credit / debit card purchases involving any of the following MCC codes:
 - 3484: Small Arms (includes businesses generally manufacturing small arms and accessories having a bore less than 30 mm)*
 - 3489: Ordnance and Accessories, Not Elsewhere Classified (includes businesses manufacturing firearms and accessories having a bore more than 30 mm)*
 - 5091: Sporting and Recreational Goods and Supplies (includes retail ammunition and retail guns sales)*
 - * Not universally recognized MCC code
- 5099: Durable Goods, Not Elsewhere Classified
- 5933: Pawn Shops
- 5941: Sporting Goods Stores (largest sellers of firearms and ammunition)
- 5999: Miscellaneous and Specialty Retail Shops (includes firearms and ammunition dealers)
- 7999: Recreation Services, Not Elsewhere Classified (includes shooting facilities or shooting ranges)

Keyword Inclusion (Above transactions must INCLUDE one of these keywords / Not exhaustive list):

- | | | | | | |
|------------------------|-------------------------------|--------------------------|---------------------------|-----------------------------|---------------------|
| Academy.com | Cobalt's | Edge-Works Manufacturing | Harbilpedis.com | NorthShoreFirearms.com | SOG International |
| Aero Precision | CollegeMfg.com | Eknife Supply | ImpactGuns.com | Norvick.com | SouthernOhioGun.com |
| Auripius | CumriComp.com | EknifeWorks.com | JP Enterprises | NTCTrading.net | SpikesTactical.com |
| AnarchyOutdoors.com | chastanogsbi shooting.co | EliteDefense.com | prafire.com | Nunich Gun Parts | SportsmansGuide.com |
| Anderson Manufacturing | CheaperThanDirt.com | FreedomMunitions.com | ISSunfire.com | OricaPlace.com | STIGuns.com |
| AR15.co | classicCollectionFirearms.com | Garde Mountain | K&K Industry.com | OriganRifeworks.com | STI International |
| B & T Industries | CopsDistributing.com | Gelbatic.com | Karambit.com | Panderrifountainmachine.com | Tacom |
| backcountry world | DawsonPrecision.com | Ghorstguns.com | KingFirearmsIntlMore.com | RebertsonTradingPost.co | TacomSG.com |
| Bass Pro Shop | DeltaDefense.com | Ghorsttuner.com | MidwayUSA.com | Ruger | TacomCanada.com |
| Blade HQ | DeltaTeamTactical.com | Glock | MGM7Targets.com | Saracino.com | TargetSportUSA.com |
| BladeOps.com | Dick's Sporting Goods | Gov.com | Mike Gibson Manufacturing | ShootingTargets7.com | WC Wolff Co. |
| BladePlay | DillonPrecision.com | GnabAGun.com | MilesGunshop.net | SIG Sauer | WideOpenSpaces.com |
| Botach.com | DLTTrading.com | Grimwork.com | Mike's Gun and Pawn | Silent Precision | Winthroplofters.com |
| BoydGunstocks.com | DSG (Dick's Sporting Goods) | GunBroker.com | MillHighShooting.com | SNKW.com | WittMachine.net |
| Brownells | Dunkellbergers.com | GunPartsCorp.com | NewFrontierArmory.com | | |
| Browning | E-Savrolinc.com | GunSpring.com | | | |

During the 60-Day Rolling Lookback Period, Query Run Periodically (SME Adjustable Parameters):

- Involves 5 or more distinct and different merchants / vendors of the above population set by the customer, AND
- Aggregate purchase transactions totaling \$2,500 or more from the above MCC codes by the customer, AND
- Number of transactions at the above MCC codes > 50% of total number of transactions by the customer, AND
- Aggregate purchase amount at the above MCC codes > 50% of total purchases by the customer.



Active Shooter Detection – Additional Red Flags to Consider

When investigators are reviewing financial accounts, besides alerted transactions, other factors investigators may wish to consider:

- Is the alerted transaction activity consistent with previous activity, or has it begun recently?
- Unexplained travel transactions, or unexplained transactions with a high-risk jurisdiction?
- Any recent purchases of counter-surveillance equipment?
- Any recent purchases of covert / secure communications equipment?
 - Virtual private networks (VPNs), online gaming, prepaid phones / calling cards, etc. transactions?
- Any recent rental of storage facilities?
- Other excessive transactions, especially if not consistent with previous activity?
 - Hardware, beauty supply, auto parts, electronics, machinist / engineer, gym / martial arts, political donations / materials, religious donations / materials, work uniforms, etc.
- Excessive ATM, Prepaid Cards, Person-to-Person (P2P), or Virtual Currency transactions?
- Any recent life insurance purchases and/or bank account closures?
- Any life stressor indicators?
 - Recent excessive legal / medical expenses (legal / family status or health challenges)?
 - No payroll deposits? Unemployed? Recently fired or laid off?
 - Delinquent / excessive debt?
- Any social media posts of concern?



Security Considerations
Customer Information

GFCD Intelligence & Analytics Data Insights and Analytics

Typologies for review as they relate to the events of 1/6/20

Scope: Transactions pulled from 11/3 – 1/12: ATM, CREDIT, DEBIT, with expanded reviews where needed.

#	Typology
	MCC Codes that, when taken together, demonstrate travel: 1 ex. hotel, rental car, & gas, AND Mileage increasingly further from cardholder's home
2	Cardholder purchases at gun-ammo, sporting goods stores, etc., that demonstrate increases in volume, value, or velocity above average and/or a high % relative to cardholder's available credit.
	Transactions that contain keyword list matches: a) potential target events, locations, or individuals b) names:
3	i. of those arrested at demonstrations / riots ii. of key leadership in organizations c) code terms and calls to action d) precursor elements to IEDs and firearms
4	Transactions in or near capitols or state capitols a/around 1/6
5	Multiple cards used by one person, for the purchasing of fire arms/ammo etc.
6	Use of business cards (not held by tactical or security firms) for the purchase of arms / ammo
9	Transfers to GiveSendGo or other crowdsourcing sites
10	Purchasing of gift cards; Use of debit cards for Crypto
11	Over/under invoicing for merchant codes at gun clubs with other vendor services (i.e., large transactions for an individual at a snack bar)



NOTE: DIA plans on looking at these typologies holistically, that is no single hit may warrant escalation but more than one could.
 DIA plans on, where possible, pulling transaction details for Credit, ATM, and DEBIT card activity.
 DIA will look to sort for these typologies via in person vs. online purchases
 The condition and contents of data may dictate that DIA will have to alter these typologies, abandon these typologies, and / or adopt new typologies

To: [redacted]@keybank.com; [redacted]@keybank.com; [redacted]@westernunion.com; [redacted]@westernunion.com;
 [redacted]@westernunion.com; [redacted]@westernunion.com; [redacted]@westernunion.com; [redacted]@westernunion.com;
 [redacted]@us.hsbc.com; [redacted]@us.hsbc.com; [redacted]@us.hsbc.com; [redacted]@us.hsbc.com; [redacted]@bofa.com; [redacted]@bofa.com;
 [redacted]@bofa.com; [redacted]@bofa.com; [redacted]@bofa.com; [redacted]@bofa.com; [redacted]@santander.us; [redacted]@santander.us;
 [redacted]@santander.us; [redacted]@santander.us; [redacted]@santander.us; [redacted]@santander.us; [redacted]@wellsfargo.com; [redacted]@wellsfargo.com;
 [redacted]@wellsfargo.com; [redacted]@wellsfargo.com; [redacted]@wellsfargo.com; [redacted]@wellsfargo.com; [redacted]@wellsfargo.com;
 [redacted]@us.mufg.jp; [redacted]@us.mufg.jp; [redacted]@us.mufg.jp; [redacted]@us.mufg.jp; [redacted]@us.mufg.jp;
 [redacted]@us.mufg.jp; [redacted]@us.mufg.jp; [redacted]@us.mufg.jp; [redacted]@us.mufg.jp; [redacted]@us.mufg.jp;
 [redacted]@unionbank.com; [redacted]@unionbank.com; [redacted]@unionbank.com; [redacted]@unionbank.com; [redacted]@us.mufg.jp; [redacted]@us.mufg.jp;
 [redacted]@sc.com; [redacted]@sc.com; [redacted]@sc.com; [redacted]@sc.com; [redacted]@sc.com; [redacted]@sc.com;
 [redacted]@citi.com; [redacted]@citi.com; [redacted]@citi.com; [redacted]@citi.com; [redacted]@citi.com; [redacted]@citi.com;
 [redacted]@paypal.com; [redacted]@paypal.com; [redacted]@paypal.com; [redacted]@paypal.com; [redacted]@paypal.com; [redacted]@paypal.com;
 [redacted]@jpmorgan.com; [redacted]@jpmorgan.com; [redacted]@jpmorgan.com; [redacted]@jpmorgan.com; [redacted]@jpmorgan.com; [redacted]@jpmorgan.com;
 [redacted]@sec.gov; [redacted]@sec.gov; [redacted]@sec.gov; [redacted]@sec.gov; [redacted]@sec.gov; [redacted]@sec.gov;
 [redacted]@finccn.gov; [redacted]@finccn.gov; [redacted]@finccn.gov; [redacted]@finccn.gov; [redacted]@finccn.gov; [redacted]@finccn.gov;
 From: [redacted]@finccn.gov
 Sent on behalf of: [redacted]@finccn.gov
 Sent: Mon 1/18/2021 4:03:27 PM Eastern Standard Time
 Subject: RE: Capitol Riots

All, please see below for a potential list of crowdfunding sites we are aware of (including some helpful information for identifying the first two).
 Eventbright.com – People have been observed using this site to post an event and sell tickets including bus tickets to the demonstrations. You may see a Card Purchase with the transaction reference "EB [the EVENT] with the phone number 8014137200.
 • For example: EB MARCH FOR TR 801413720 Query by the phone number.

Aneidot.com – You may see a Card Purchase with the transaction reference in the following format: "A" [a Message or like a cause or candidate] with the phone number in the following format: 225-2501301.
 • For example: A *SMITH 225-2501301 /DC US or A * PAC 225-2501301 /DC US. Query by the phone number.

- Gofundme
- Patreon
- Indiegogo
- RocketHub
- Fundable
- Fundly
- Crowdrise
- Wefunder
- Circleup
- Fundraazr
- Pozible
- Start some good
- Kiva
- Angel list
- Causes
- Piggybackr
- Youcaring
- Utile
- Classy
- Realcrowd
- Hatreon
- MakerSupport
- WeSearchr
- GoyFundMe (likely now defunct)
- Rootbocks (likely now defunct)

Regards,
 [redacted]
 From: [redacted]
 Sent: Sunday, January 17, 2021 4:06 PM
 To: [redacted]@keybank.com; [redacted]@keybank.com; [redacted]@westernunion.com; [redacted]@westernunion.com;
 [redacted]@westernunion.com; [redacted]@westernunion.com; [redacted]@westernunion.com; [redacted]@westernunion.com;
 [redacted]@us.hsbc.com; [redacted]@us.hsbc.com; [redacted]@us.hsbc.com; [redacted]@us.hsbc.com; [redacted]@bofa.com;
 [redacted]@bofa.com; [redacted]@bofa.com; [redacted]@bofa.com; [redacted]@bofa.com; [redacted]@bofa.com; [redacted]@bofa.com;
 [redacted]@santander.us; [redacted]@santander.us; [redacted]@santander.us; [redacted]@santander.us; [redacted]@santander.us;
 [redacted]@santander.us; [redacted]@wellsfargo.com; [redacted]@wellsfargo.com; [redacted]@wellsfargo.com; [redacted]@wellsfargo.com;
 [redacted]@wellsfargo.com; [redacted]@wellsfargo.com; [redacted]@wellsfargo.com; [redacted]@wellsfargo.com; [redacted]@wellsfargo.com;
 [redacted]@us.mufg.jp; [redacted]@us.mufg.jp; [redacted]@us.mufg.jp; [redacted]@us.mufg.jp; [redacted]@us.mufg.jp;
 [redacted]@unionbank.com; [redacted]@unionbank.com; [redacted]@unionbank.com; [redacted]@unionbank.com; [redacted]@unionbank.com;
 [redacted]@us.mufg.jp; [redacted]@us.mufg.jp; [redacted]@us.mufg.jp; [redacted]@us.mufg.jp; [redacted]@us.mufg.jp;
 [redacted]@sc.com; [redacted]@sc.com; [redacted]@sc.com; [redacted]@sc.com; [redacted]@sc.com; [redacted]@sc.com;
 [redacted]@citi.com; [redacted]@citi.com; [redacted]@citi.com; [redacted]@citi.com; [redacted]@citi.com; [redacted]@citi.com;

Mr. STEUBE. Last week, April 24, Chairman Jordan sent you a letter regarding the financial surveillance without a warrant of American citizens. Are you in receipt of that letter?

Secretary YELLEN. We are in receipt.

Mr. STEUBE. Have you read it?

Secretary YELLEN. I have looked at it.

Mr. STEUBE. You have looked at it? Does that mean you have read it, or is that—

Secretary YELLEN. Yes.

Mr. STEUBE. Okay. Do you intend to provide the committee with the SARs, as requested in that letter?

Secretary YELLEN. We will respond to the committee.

Mr. STEUBE. Are you going to provide the SARs, as requested in the letter?

Secretary YELLEN. Well, those reports are strictly confidential under the law, and I am not prepared to discuss any one in particular.

Mr. STEUBE. I am just asking if you are going to comply with the letter that Chairman Jordan who has oversight over your Department and the cabinet, if you are going to comply with the letter.

Secretary YELLEN. We will respond to the letter, and I don't really have more to say about that.

Mr. STEUBE. Under the Biden Secrecy Act, the Financial Crimes Enforcement Network, an agency under your control at the Department of Treasury receives vast amounts of data covering millions of financial transactions involving everyday Americans. Is that correct?

Secretary YELLEN. Through FinCEN receives reports.

Mr. STEUBE. And is it correct that FinCEN received 20.6 million currency transaction reports in 2022?

Secretary YELLEN. I am not sure. It could be.

Mr. STEUBE. It could be, roughly, more, less?

Secretary YELLEN. I don't know the number.

Mr. STEUBE. But you would agree that it is millions of reports?

Secretary YELLEN. Probably, yes.

Mr. STEUBE. It is also true that FinCEN received 4.3 million suspicious activity reports in 2022, which was nearly double the amount received by the agency in 2019.

Secretary YELLEN. I don't know.

Mr. STEUBE. You don't know at all, even though it is an agency—

Secretary YELLEN. I don't know if they received double the previous year, I really don't know.

Mr. STEUBE. But SARs typically gets millions of reports. You would agree with that statement?

Secretary YELLEN. I don't know if it doubled, though.

Mr. STEUBE. Okay, well, I am sure your staff can provide you with that information.

Secretary YELLEN. I am sure they can.

Mr. STEUBE. That is an agency under your—so you don't know is what you are telling me.

Secretary YELLEN. I could look into it, but I don't happen to know.

Mr. STEUBE. Okay. Doesn't the data in these reports include important and sensitive private and financial data?

Secretary YELLEN. Well, these are private data only available to law enforcement.

Mr. STEUBE. But it includes data of American citizens, their private financial data. Correct?

Secretary YELLEN. Well, on transactions that are regarded as suspicious.

Mr. STEUBE. And their data, correct.

Secretary YELLEN. And potentially illegal.

Mr. STEUBE. The sensitive personal financial data included in this report is held in a database. Correct?

Secretary YELLEN. Yes.

Mr. STEUBE. Neither FinCEN nor any Federal law enforcement agencies need to get a warrant to access this private financial data. Is that correct?

Secretary YELLEN. I don't think you need to get a warrant, but it is only shared subject to strict confidentiality.

Mr. STEUBE. But you don't need to get a warrant.

Secretary YELLEN. Not to the best of my knowledge.

Mr. STEUBE. Are you aware that in 2021 FinCEN emailed financial institutions suggesting search terms including, and I quote, "America first," "Trump," and "MAGA" to use in identifying transactions that may indicate, and I quote, "involvement in riots or potential violence"?

Secretary YELLEN. This is activity that took place under the previous administration, not under the Biden Administration, in close proximity—

Mr. STEUBE. No, this is 2021.

Secretary YELLEN. This is—

Mr. STEUBE. Twenty-twenty-one.

Secretary YELLEN. This is before President Biden's inauguration.

Mr. STEUBE. No, it is after.

Secretary YELLEN. And after January 6, there was concern about potential disruption of his inaugural. And FinCEN worked as it is instructed to do with financial institutions to try to uncover who was involved in January 6—

Mr. STEUBE. So were you aware of the FinCEN emailing the financial institutions with those search terms?

Secretary YELLEN. I am now aware that there were communications that took place. In some cases, I believe financial institutions suggested to this group search terms they had used that had been helpful in identifying potential perpetrators of January 6.

Mr. STEUBE. FinCEN also worked with the FBI in early 2021 to determine certain transaction thresholds for SARs. These include certain weapons-related transactions. Do you know how many SARs were filed as a result of the FBI and FinCEN's coordination at that time?

Secretary YELLEN. No. The only reason that—I believe that weapons were involved.

It is never a search term used on its own that results in anything. It is a way of trying to narrow the scope of search for indi-

viduals who, based on other information available to the financial institution, may have been guilty of illegal behavior.

Mr. STEUBE. Without a warrant.

Mr. Chairman, I ask that the letter from Chairman Jordan to Secretary Yellen dated April 24 is added to the record.

Chairman SMITH. Without objection.

[The information follows:]

JIM JORDAN, Ohio
CHAIRMAN

JERROLD MADLER, New York
RANKING MEMBER

ONE HUNDRED EIGHTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216
(202) 225-6906
judiciary.house.gov

April 24, 2024

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Yellen:

The Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government are continuing to conduct oversight of financial surveillance of American citizens, including the disclosure of private financial records to federal authorities without legal process. As part of its oversight, the Committee and Select Subcommittee received testimony indicating that various financial institutions, in addition to Bank of America (BoA), filed Suspicious Activity Reports (SARs) in the weeks following January 6, 2021, at the request of and in coordination with the Financial Crimes Enforcement Network (FinCEN) and the Federal Bureau of Investigation (FBI).¹ To assist with our oversight, we request that you provide us with these SARs and any related filings, including the supporting documentation.]

On February 16, 2024, we requested that you produce a SAR filed by BoA on January 17, 2021.² On March 28, 2024, the Treasury Department (Department) made the SAR available to the Committee for an *in camera* review.³ The Committee's and Select Subcommittee's review of that SAR revealed that BoA shared the information of 211 individuals with federal law enforcement according to certain "thresholds" provided by the FBI and included references to "supporting documentation" reflecting the customer relationships identified by the SAR.⁴ The Department stated that it was not in possession of the supporting documentation and, therefore, Committee staff could not review its details.

¹ See Transcribed Interview of Mr. Peter Sullivan at 78-79 (Apr. 9, 2024); see also Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Hon. Janet Yellen, Sec'y, U.S. Dep't of the Treasury (Feb. 16, 2024).

² See Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Hon. Janet Yellen, Sec'y, U.S. Dep't of the Treasury (Feb. 16, 2024).

³ See Letter from Corey Tellez, Acting Assistant Sec'y, Office of Legislative Affairs, U.S. Dep't of the Treasury, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Mar. 28, 2024).

⁴ See Transcribed Interview of Mr. Peter Sullivan at 34, 37. (Apr. 9, 2024); see also BofA-HJUD-00000002.

The Honorable Janet L. Yellen
 April 24, 2024
 Page 2

On April 9, 2024, the Committee conducted a transcribed interview with the FBI's former financial sector liaison, Peter Sullivan.⁵ Mr. Sullivan testified that following the events of January 6, 2021, he worked with FinCEN and BoA to "narrow" the "focus" of financial institutions towards specific "fact-based patterns" used to create transaction "thresholds."⁶ Mr. Sullivan subsequently emailed these thresholds to BoA with the "expectation" that the FBI would "review any information that met their thresholds for sharing the information back to law enforcement."⁷ Indeed, after BoA filed the January 2021 SAR with the Department, a BoA executive also sent the filing directly to Mr. Sullivan who subsequently reviewed the SAR and its supporting documentation, which identified 211 individuals' information.⁸

Following his review of the SAR materials, Mr. Sullivan asked BoA to identify customers that had also made "weapons-related transactions" after January 6, 2021, and BoA identified four individuals.⁹ Based on these additional criteria, the FBI conducted "criminal background queries" into these individuals and sent "four Guardians out to three field offices" for further investigation.¹⁰ The Guardian Program is a process in which the FBI shares information with partnered law enforcement entities to track potential threats and suspicious activity.¹¹ In this case, once the Guardian assessments were completed and shared, the BoA SAR and its supporting documentation were subsequently uploaded to the "[Washington Field Office] case file" and the office then sent out "a number of leads."¹² However, according to Steve Jensen, the then-Section Chief of the FBI's Domestic Terrorism Operations Section, he "pull[ed]" the "leads" back because they "lacked allegations of federal criminal conduct."¹³ FBI Director Chris Wray similarly stated that this information was later "recalled."¹⁴

BoA was not the only financial institution that responded to the government's request for Americans' private financial data.¹⁵ Mr. Sullivan testified that executives at other financial institutions also sent similar SAR filings directly to him, relying on the "same fact-based patterns" created by the FBI and FinCEN.¹⁶ To that end, FinCEN "created a tag" to "group" all SARs related to the events that occurred at the Capitol on January 6, 2021.¹⁷ Given this coordination, the Committee and Select Subcommittee are concerned that the federal government, through the FBI and FinCEN, sent similar or identical thresholds to other financial institutions that manipulated the SAR filing process to elicit the information and transaction history of individuals without any allegation of federal criminal conduct. This kind of

⁵ See generally Transcribed Interview with Mr. Peter Sullivan (Apr. 9, 2024).

⁶ See Transcribed Interview with Mr. Peter Sullivan at 32 (Apr. 9, 2024).

⁷ See Transcribed Interview with Mr. Peter Sullivan at 29, 32, 90 (Apr. 9, 2024); see also BofA-HJUD-00000225.

⁸ See Transcribed Interview of Mr. Peter Sullivan at 34, 78 (Apr. 9, 2024); see also BofA-HJUD-00000227.

⁹ See Transcribed Interview of Mr. Peter Sullivan at 37, 38. (Apr. 9, 2024).

¹⁰ See *id.*

¹¹ See FEDERAL BUREAU OF INVESTIGATION, PRIVACY IMPACT ASSESSMENT FOR THE eGUARDIAN SYSTEM (2013); see also Transcribed Interview of Mr. Peter Sullivan at 38. (Apr. 9, 2024).

¹² See Transcribed Interview of Mr. Peter Sullivan at 38, 107. (Apr. 9, 2024).

¹³ Transcribed Interview of Mr. Steven Jensen at 149-50, 152 (May 19, 2023).

¹⁴ See *Oversight of the Federal Bureau of Investigation Before the H. Comm. on the Judiciary*, 118th Cong. (2023).

¹⁵ See Transcribed Interview of Mr. Peter Sullivan at 78, 80. (Apr. 9, 2024).

¹⁶ *Id.*

¹⁷ See Transcribed Interview of Mr. Peter Sullivan at 78, 94. (Apr. 9, 2024); see also TFC000003.

The Honorable Janet L. Yellen
April 24, 2024
Page 3

warrantless financial surveillance raises serious concerns about the federal government's respect for Americans' privacy and fundamental civil liberties.

Pursuant to the Rules of the House of Representatives, the Committee is authorized to conduct oversight of matters involving civil liberties and criminal law to inform potential legislative reforms.¹⁸ In addition, H. Res. 12 authorized the Judiciary Committee's Select Subcommittee on the Weaponization of the Federal Government to investigate "issues related to the violation of the civil liberties of the United States."¹⁹ H. Res. 12 also authorized the Select Subcommittee to investigate "how executive branch agencies work with, obtain information from, and provide information to the private sector, non-profit entities, or other government agencies to facilitate action against American citizens."²⁰

The Supreme Court has recognized that Congress has a "broad and indispensable" power to conduct oversight, which "encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys in our social, economic or political system for the purpose of enabling Congress to remedy them."²¹ These potential legislative reforms could include, among other proposals, legislation to prescribe how federal law-enforcement entities collect or receive private customer data, legislation to enhance the protections of civil liberties for customers of financial institutions, or legislation to prevent the misuse of Americans' private financial information. The documents we are requesting from the Treasury Department are necessary to inform such potential legislation.

Accordingly, to assist with the Committee's and Select Subcommittee's investigation, please produce the following documents and information:

1. All Bank Secrecy Act filings, including SARs and supporting documentation, that reference "FIN-2021-DE01" and that identify more than one individual; and
2. All documents and communications between or among FinCEN, the FBI, or any other federal entity referring or relating to Bank Secrecy Act filings submitted with the tag "FIN-2021-DE01."

We request that you produce these documents as soon as possible but no later than 5:00 p.m. on May 8, 2024.

¹⁸ Rules of the U.S. House of Representatives, R. X (2023) (118th Cong.).

¹⁹ H. Res. 12 § 1(b)(1).

²⁰ *Id.*

²¹ See, e.g., *Trump v. Mazars LLP*, No. 19-715 at 11 (U.S. slip op. July 9, 2020) (internal quotation marks and citations omitted).

The Honorable Janet L. Yellen
April 24, 2024
Page 4

Please contact Committee staff at (202) 225-6906 if you have any questions about this request. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Jim Jordan". The signature is stylized with a large "J" and a long, sweeping underline.

Jim Jordan
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member

Chairman SMITH. Mrs. Fischbach.

Mrs. FISCHBACH. Thank you, Mr. Chair, and thank you, Secretary, for being here today.

The Tax Cuts and Jobs Act, passed by President Trump, provided tax relief to millions of middle-class Americans and their families. The doubling of the standard deduction, the doubling of the Child Tax Credit, and the adjusting of individual tax rates saved working-class people significant money on their tax bills.

President Biden's comments have already been mentioned several times today, and he told the American people flat out that he intends to let the Trump tax cuts expire and remain expired. You have repeatedly said today that the President has no tax plan, only principles from which he will negotiate. Let me just say that allowing the Trump tax cuts to expire on middle-income Americans seems like a misguided principle to me.

So let me ask you this, Madam Secretary. If the Trump tax cuts expire, and President Biden fails to pass his tax plan, which actually currently doesn't exist, which Americans will pay less in taxes?

Secretary YELLEN. President Biden has made absolutely clear that he opposes increasing taxes on people earning less than \$400,000, and he supports cutting taxes for working people and families with children to give them more breathing room. And—

Mrs. FISCHBACH. Reclaiming my time—

Secretary YELLEN [continuing]. He will work with Congress to try to achieve that.

Mrs. FISCHBACH. Ma'am, reclaiming my time, thank you, isn't it true that nearly all middle-income individuals and families would pay more with the expiration of the Trump tax cuts?

Secretary YELLEN. Some individuals would, but President Biden has said he would oppose allowing tax cuts to expire for people making under \$400,000.

Mrs. FISCHBACH. But my understanding, though, is that he doesn't really have a tax plan, he just has ideas. And so how are you going to translate that into—

Secretary YELLEN. There will be a negotiation over what to do when these tax cuts expire. And the President, as he does in many other situations, will negotiate with Congress.

Mrs. FISCHBACH. But I think that, if you let these expire, you are going to see increases, you are going to see increases. And without an alternative, I mean, we just—right now what you are saying is there is just an idea out there.

Secretary YELLEN. There are principles.

Mrs. FISCHBACH. Right now there are principles, okay, principles. Same thing. There is no real plan. And you are going to let these—he is going to let these tax cuts that—people are recognizing that there are—they are seeing right now expire with just principles that are—

Secretary YELLEN. There will be a negotiation.

Mrs. FISCHBACH [continuing]. Hanging out there.

Secretary YELLEN. And in that negotiation he will oppose any tax increases on families earning under \$400,000 at the same time that he will oppose keeping in place benefits that went to the wealthy.

Mrs. FISCHBACH. And maybe you addressed this earlier, but is he going to tell us what these principles are? Is he going to give us some concrete—

Secretary YELLEN. He has told you what the principles are.

Mrs. FISCHBACH. Okay, all right.

Secretary YELLEN. I am telling you what the principles are.

Mrs. FISCHBACH. Well, then, there is just not—I mean, we are supposed to rely on these ideas, principles, whatever you want to call them, when we have solid tax cuts right here, and they shouldn't be allowed to expire because just, you know, a single parent making \$52,000 a year with two kids would pay an average of \$1,474 more in taxes if these expire. A married couple with two kids making \$85,000 a year would pay an average of \$1,661 more in taxes if these expire. A retired married couple making \$48,000 a year would pay an average of \$340 more in taxes if these expire.

That is real dollars to these people and—you know, that are paying these taxes, and are recognizing and are seeing these breaks under the Trump tax cuts. And so to just say that they—you are going to—for the President just to say he is going to let them expire doesn't seem very responsible because these are real people that are paying these—that would pay more taxes. And so I guess we just are supposed to rely on the principles and the idea that he will come up with something through negotiation to help these people.

So with that I yield back.

Chairman SMITH. Mr. Schneider.

Mr. SCHNEIDER. Thank you, Mr. Chairman.

And Madam Secretary, thank you for being here. As others have said, thank you for your work on behalf of our country and the American people. I am just briefly going to pick up on some of the things we have been hearing.

But, you know, when we talk about—and you mentioned we laid out principles, and I think the principles have been very clear. What Democrats are trying to do is try to bring down costs for working families to help them make ends meet.

In the American—

Secretary YELLEN. Exactly.

Mr. SCHNEIDER. In the American Rescue Plan, we cut child poverty in this country by 50 percent through the child tax cut. And I think next year, given the chance, we are going to do that and not just try to cut it by 50 percent, but in the wealthiest country in the world no child in this country should be living in poverty. And we shouldn't be willing to accept that.

We are investing in housing. The Low-Income Housing Tax Credit that addresses a critical need for families and workers around this country to have access to quality housing.

And R&D, we grow our economy by investing in innovation, and these are things that the 2017 tax law didn't do. So I could spend my whole five minutes on that. I don't want to spend my time, I really want to hear more from you.

But one of the things that we did with the Inflation Reduction Act, among many great accomplishments, was we made the single largest investment in climate change. It was truly remarkable. And part of that was a tax credit for Sustainable Aviation Fuel that I

was proud to lead on. And I am working to make sure that we implement that and extend that for the future.

So at the risk of asking a question you may not be able to answer, but can you give us any sense of the criteria or objectives that Treasury is using in thinking about how to issue the rule for Sustainable Aviation Fuel, and any update on forthcoming guidance that we might be expecting?

Secretary YELLEN. Absolutely. First of all, I want to thank you so much for your leadership on the SAF credit, and I want to tell you that today is the day that—we are releasing a notice today that will catalyze innovation in the aviation industry and incentivize the production of cleaner and more sustainable aviation fuels. And I think it will make the United States a leader in decarbonizing aviation. So we are announcing the release today of a notice that will provide clarity around eligibility for the SAF credit.

And at the same time we will also be releasing an updated model of the GREET model, which is applicable—will enable firms to determine exactly the credit that they are eligible for under the SAF. I think it will provide the clarity that people have been looking for, and this should occur this afternoon sometime.

Mr. SCHNEIDER. Great. Well, thank you. I am so excited to hear that not only is it forthcoming, but it is coming today. I know that is critically important.

Aviation accounts for more than two percent of greenhouse gas emissions. Through Sustainable Aviation Fuel we have the possibility of doing more than a 50 percent reduction and maybe getting it down further from that. So I can't emphasize how important this is.

I also know that you have a hard out, so I am going to yield back the balance of my time so that more of my colleagues will have a chance to ask questions. But I thank you for your time.

Secretary YELLEN. Thank you, Congressman.

Chairman SMITH. Mr. Moore.

Mr. MOORE of Utah. Thank you, Chairman.

Secretary Yellen, thank you for being here. I remember our visit last time. I appreciate these days. I know they are long days for you, with a lot of questions coming from multiple directions, but this one of the more important hearings that we will do all year.

So this is going to sound like a gotcha question to start off with. It is not. I want to expound on it and have a really thoughtful discussion on the corporate tax rate, because it is based on our conversation last time and a continuation of that. But would you agree, can we at least say that we agree that tax policy does have an impact on our economy?

Secretary YELLEN. It can, yes.

Mr. MOORE of Utah. Tax policy does have an impact. So this is the part that is frustrating me as I hear from my Democratic colleagues today about, you know, A, we have got such a great economy today, and we have had such a great, strong recovery, and all this kind of—the bare bones of our economy are still in place from the 2017 Tax Cut and Jobs Act. We saw strong economic growth. We saw real wage growth come from the 2017 Tax Cut and Jobs

Act. And I can speak so favorably about it, I wasn't even in Congress then so I am not even boasting about this.

As I watched COVID hit and throw everything off in the world, and then, when Democratic control took over in 2021, there was massive spending but the same tax code, the same tax rate still existed. Some things were starting to trail off. I hope to be able to reestablish the R&D tax credits, as well as everybody on this committee, basically. But we have seen a strong economic recovery. Unemployment is low, and I can absolutely point that to the fact that we have had a consistent, simpler tax code that strengthened middle class and lower-income Americans since 2017.

The part that concerns me is a book that I recently read. It is called, "Never Split the Difference." The tax rate was 35 percent. In 2017 we lowered it to 21. And now President Biden just wants to do 28. It almost feels like lazy to me that we are just going to say, well, okay—because you admitted last time you were here when we were having our conversation, "I do believe it was too high, and now I believe it is too low, so we are just going to split the difference."

But the part that I want to hit on here is, according to the Tax Foundation, the top combined marginal rate on corporate income under current law is actually 25.6 percent. And the President's proposal would increase that to 32.2, a corporate tax rate that would be the second highest in the OECD, behind Colombia. The Joint Committee on Tax has shown that most of the cost of a 28 percent corporate tax rate would be borne by Americans making less than \$500,000.

What specific analysis can you point to demonstrating that raising the corporate tax rate won't impose burdens on low- and middle-income Americans?

Secretary YELLEN. Well, I think all of the analysis I am familiar with shows that TCJA, including the corporate tax cut, was a regressive tax cut that disproportionately benefitted the wealthy and the large corporations, and the corporate tax cut enriched corporate shareholders at the expense of the alternative, which would have been benefits to middle-class families.

Mr. MOORE of Utah. So if I could jump in—

Secretary YELLEN. It promised an investment boom, and that certainly never materialized.

You said that the economy did well, but I don't believe it did well because of that piece of legislation.

Mr. MOORE of Utah. Okay, thank you.

Secretary YELLEN. It simply busted the deficit—

Mr. MOORE of Utah. And I will reclaim my time, because I don't believe you can argue. And if you want to come to Utah's 1st district, you can hear from companies in that district where their real wage income grew for their frontline employees. This wasn't just for all of the shareholders like it is often times communicated.

We will see that, as we just try to split the difference on this tax policy, that that cost will go directly to the consumer. Take a—

Secretary YELLEN. Well, there is—

Mr. MOORE of Utah [continuing]. Retail company or a Home Depot or a Lowe's. If we put that extra tax burden on them, there is only one place to put it. They still have to pay their employees.

They are going to have to raise income—they are going to have to raise prices on consumers. And I don't know of any analysis that would refute that.

Secretary YELLEN. Well, there is an interesting recent paper that shows that there were some benefits that went to wage earners from the corporate tax cut, but it was almost exclusively to the highest-income earners within corporations, that virtually none of it went to the massive workers at these firms.

Mr. MOORE of Utah. And that hasn't been my experience talking to actual companies in my actual district. I know it is considered a strong talking point from my colleagues on the left, but that hasn't been the experience. Companies had extra income that they could reinvest in their companies, they would keep it onshore.

And this is the part that I just dig into that frustrates me so bad. And I am already over time, and I appreciate the conversation. And I believe next time we will continue to talk about the corporate tax rate.

Secretary YELLEN. Thank you.

Chairman SMITH. Mrs. Steel.

Mrs. STEEL. Thank you, Mr. Chairman. I want to highlight the provision from TCJA that has been bipartisan: support Foreign Derived Intangible Income deduction, or FDII, incentives for companies to keep intellectual properties here in the United States. This allows companies to invent and make new creative works here, including my home state of California.

We are also competing with countries who provide massive tax incentives to attract innovative companies, and FDII ensures that United States remain the best place to develop global solutions and technologies for the future, and we must protect this provision created in TCJA. This is the reason why I am introducing Growing and Preserving Innovation in America Act. This bipartisan legislation will permanently preserve the current FDII deduction rate.

Secretary Yellen, you have been here for such a long time, and I really appreciate it. And I just want to do the follow-up question that Congressman Wenstrup asked you about China and the OECD, that under TCJA that U.S. corporate tax lowered to 21 percent. And China is 25, but there are actually certain companies up to 15 percent. So they are—kind of like corporate tax rate is low.

If the United States raises corporate tax rate to 28 percent, and we adopt a new global minimum tax rate, the U.S. will forfeit tens of billions of dollars that we have been talking about. That Pillar One, we are going to lose about \$120 billion. And Pillar Two, about \$40 billion. And, you know, we did the CODEL trip to France and Germany. The French government didn't even want to meet us because they are gaining about \$4 to \$5 billion from Pillar One and Pillar Two. So this will hurt the U.S. economy, I believe.

And the plan being discussed fails to hold China accountable. I am on Select Committee on China, so we have been really watching it, you know, what is going on with China. So if I heard right that you assumed earlier that China will join the OECD agreement, what assurances do you have that they would truly comply with the rules, and not continue to abusing the system like they have done so many times on the international level?

And why should we give the CCP economic advantages on the back of American taxpayers?

Secretary YELLEN. Okay, well, you covered a lot of different things, but let me respond on China and Pillar Two.

You know, this is an agreement that contains an enforcement mechanism. That is one of the reasons it is so powerful. If a country doesn't go along with it, doesn't raise their minimum tax rate on their multi-nationals to the agreed-upon level, other countries that have complied and put it into effect can tax firms based in countries that are not going along with it. That applies to China.

If China doesn't raise taxes on its multi-nationals and they operate in the United States, the U.S. will impose taxes by—it is called the Undertaxed Payment Rule. We will impose taxes on those Chinese corporations and we will collect the tax revenue. And we will make sure that those companies do pay a 15 percent minimum tax so that they don't have unfair competition with our companies.

Now, if China imposes the tax, they can collect the tax revenue. But if they won't do it, we are going to collect the tax revenue and we are going to tax the Chinese firms. And this works to our advantage, not to China's.

Mrs. STEEL. I am not really sure that—you know, China has been always, like, you know, for them, that stealing is much cheaper than, you know, researching, and it just takes longer time. It is much faster. So I don't know they can really follow the rules and then they are going to raise taxes to comply with the, you know, global minimum tax.

So having said that, I want to go to my question that another expiring provision in the TCJA is enhanced standard deduction. This is a guaranteed tax deduction for hard-working Americans who want to file simple tax returns. And you are talking about actually simple tax returns and about 140,000 people filed it because the IRS's system that has been changed. If this provision expires, taxes will go up on hard-working families.

Do you support the increased standard deduction created by TCJA, and support keeping these individual tax cuts for hard-working Americans making less than \$400,000 who do not want to maneuver a more complex tax system that exists—

Mr. HERN [presiding]. The gentlelady's time is expired.

Secretary YELLEN. The President supports no tax increases on families making under \$400,000.

Mrs. STEEL. I'll just make just one statement, because most of new audits from IRS are targeted more on taxpayers making under just \$200,000, so that \$400,000 are kind of like assumed numbers.

But you know what? Having said that, I have a few questions, and I am going to submit them in writing.

[The information follows:]

Congress of the United States
Washington, DC 20515

April 26, 2024

The Honorable Janet Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Yellen,

On November 15th, 2023, Representatives LaHood and DelBene led a bipartisan letter to Ambassador Katherine Tai to express opposition to the U.S. Trade Representative's (USTR) decision to abandon longstanding bipartisan digital trade proposals at the World Trade Organization, a position that also has been reflected in the lack of ambition in USTR's digital trade proposals in other contexts such as the Indo-Pacific Economic Framework negotiations. As that letter argued, the action was made without sufficient consultation with Congress and runs counter to the interests of American workers and businesses, while ceding leverage over digital trade rules to foreign countries. It also undermines high-standard digital trade provisions that the United States successfully pushed for in recent trade agreements, including the United States-Mexico-Canada Agreement. With the decision, USTR determined that it will no longer defend against foreign governments' demands for American businesses to locate facilities, equipment, employees, and intellectual property in those countries.

In addition to the harmful impacts on the U.S. economy and the concession of leadership on global digital trade rules, we are concerned about the implications of USTR's digital trade decision for U.S. tax policy. First, the data-localization requirements that would be allowed to proliferate in the absence of U.S. leadership could, in practice, require some U.S. based companies to have a taxable presence (and, in some cases, a 'permanent establishment' pursuant to a bilateral tax treaty) in foreign jurisdictions where common business practice otherwise would not require such presence. This could have the effect of diverting investment from the United States. Second, this new requirement has significant international tax implications allowing foreign governments to claim a right to tax business revenue that would be taxed in the United States under existing law and treaties. Finally, the policy appears to be at odds with many of the objectives outlined by the Department of the Treasury, both in negotiations over Pillar One of the Organization for Economic Co-operation and Development's (OECD) Inclusive Framework on Base Erosion and Profit Shifting, and positions described in the General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals (FY25 Greenbook).

As you are aware, the overarching aim of Pillar One is to reorient international taxation to changes brought by the digitalization of the economy, primarily by recognizing market jurisdictions as having taxing rights over a portion of the profits of multinational enterprises (MNE) regardless of whether the MNE has a taxable presence in that jurisdiction under existing laws and bilateral tax treaties. As such, Pillar One has been described as a reallocation of taxing

rights in that there is no fundamental change in the source of profits, but instead a post-hoc reallocation of who may tax those profits. The digital trade decision at USTR does the opposite, moving the source of profits abroad as economic assets are shifted away from the U.S. and towards countries with data storage requirements, bringing jobs, intellectual property, and tax revenue with them. In a recent article titled “How to Protect the U.S. Tax Base: Don’t Give it Away,” Tax Professor Mindy Herzfeld states that:

“To a significant degree, this is precisely the result many countries have been seeking on the tax side: for U.S. companies to move real operations to their jurisdictions (generating a physical presence and significant profits) rather than simply selling into them.”

With Pillar One proposing to reallocate some taxing rights “on paper,” market jurisdictions could assert certain primary taxing rights over a portion of the profits generated by globally-engaged companies without the need to show a legal or economic nexus to value creating assets or activities in such jurisdictions. Given that 64% of the profits of Amount A’s in-scope companies are U.S. based, any such real restructuring of operations that may be required as a result of USTR’s digital trade position is more likely to harm jobs and investment currently based in the United States. A number of outstanding concerns with regard to Pillar One still need to be addressed for it to achieve the necessary support in Congress, with many of these highlighted at the recent Ways and Means Tax Subcommittee Hearing on Pillar One. Given these outstanding concerns surrounding Pillar One, it is not clear why USTR would decide on a policy that is at odds with the current Pillar One proposal negotiated by the Treasury Department, particularly if Congressional approval of Pillar One is an objective of the Biden Administration.

The Department of the Treasury has long recognized the general policy aim of preserving and promoting U.S. based jobs and investment. For example, the FY25 Greenbook notes the President’s concern with “undesirable incentives to locate certain economic activity abroad.”

However, this policy objective is clearly in contradiction to USTR’s digital trade decision. If local-data storage requirements are allowed to proliferate throughout the world, U.S. based MNEs will face not just an incentive to invest abroad but a requirement to do so. At the same time, any potential advantage of Pillar One to the United States is undermined, with the real reallocation of company operations towards market jurisdictions occurring despite the proposed agreement attempting only to reallocate taxing rights.

With U.S. MNE’s investing in new facilities to comply with the local data laws, investment would be diverted away from the United States, along with the facilities, jobs, intellectual property, and tax revenue that follow them. At the same time, as companies’ taxable presence in countries with local-data storage requirements grows, U.S. foreign tax credit claims are bound to grow with it. Together, these shifts are likely to result in more taxes to foreign jurisdictions and less to the United States.

In short, the reversal on digital trade policy by USTR reflects an acquiescence with US tax base erosion through increased foreign tax payments in lieu of tax payments to the US Treasury. This appears to contradict the position of the Department of the Treasury as noted above and

longstanding bipartisan objectives to promote domestic investment and grow the U.S. tax base. While many companies depend on investing in foreign markets in order to deliver their products to those markets, the nature of the internet means many digital companies do not currently face the same requirement for foreign market access. Artificially creating those requirements through regulations would create an unnecessary drag on the growth of the digital economy.

Given the inconsistency between U.S. Department of the Treasury's stated policy objectives and USTR's digital trade decision, we are additionally concerned that USTR may have made such a decision without adequate consultation with the Department of the Treasury. Given the significant tax implications of the decision, inadequate interagency review would be highly concerning. For a decision such as this, it is important that the Treasury provides guidance as to the potential tax and economic implications of the decision.

As we approach your FY25 Budget Hearing before the Ways and Means Committee, we look forward to having the opportunity to discuss these matters with you, including whether the Department of the Treasury estimated the tax implications of USTR's reversal of the U.S. position on digital trade rules, as well as the broader economic implications of the decision.

Sincerely,



Randy Feenstra
Member of Congress



Darin LaHood
Member of Congress



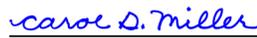
Mike Kelly
Member of Congress



Ron Estes
Member of Congress



Kevin Hern
Member of Congress



Carol D. Miller
Member of Congress



Nicole Malliotakis
Member of Congress



Claudia Tenney
Member of Congress



Adrian Smith
Member of Congress



Beth Van Duyne
Member of Congress

Mr. HERN. Thank you. The gentleman from Pennsylvania, Mr. Evans, is recognized for five minutes.

Mr. EVANS. Thank you, Mr. Chairman.

Mr. HERN. Will the gentleman suspend?

We have about 28 minutes left of your time, Madam Secretary, so we are going to try to keep it on time going forward here. And I would appreciate all of the members to respect that time. Thank you.

Secretary YELLEN. I don't have—

Mr. HERN. Go ahead, Mr. Evans.

Mr. EVANS. Thank you, Mr. Chairman.

Secretary YELLEN. I have to leave at 2:15.

Mr. HERN. Two-fifteen? We had better talk fast, then. [Laughter.]

Mr. EVANS. Thank you, Mr. Chairman.

I thank you, Madam Secretary, for being here today. I wanted to thank you for—I wanted to talk about Social Security, one of the most foundational anti-poverty programs that our country has ever created. Something I want to stress, that it is an earned benefit.

So the question I want to ask, Madam Secretary, the House Republican Study Committee proposed Social Security budget would cut Social Security by \$1.5 trillion over the next decade. Can you please describe how this plan would impact the recipients for whom Social Security makes up either the majority or the entirety of their income for retired years?

Secretary YELLEN. Well, Social Security is a critical program that keeps millions, tens of millions of people who are retired or seniors out of poverty. And President Biden has made it clear he would never support cuts in benefits to those individuals.

Mr. EVANS. So what exactly in your mind that you think this House Republican Study Committee is attempting or suggesting? Do you have any idea what you think they are trying to suggest?

Secretary YELLEN. I am not sure exactly what they are suggesting, but they may be suggesting benefit cuts, raising the retirement age. I am not sure what is in their list of suggestions.

Mr. EVANS. That is basically what I want to get an understanding. If you don't have any idea, we don't have any idea. So I want to be very clear.

We thank you for all that you have done, and we thank for the service that you have done. We really appreciate and value that. Thank you.

Secretary YELLEN. Thank—

Mr. EVANS. I yield back to the chairman.

Secretary YELLEN. Thank you, Congressman.

Mr. HERN. I thank the gentleman from Pennsylvania.

By the way, I chair that committee. So if you need the help on what that policy is doing, I would love to sit down and chat with you.

With that I recognize the gentleman from Pennsylvania, Mr. Fitzpatrick.

Mr. FITZPATRICK. Thank you.

Thank you, Secretary Yellen. Thank you for testifying here today on the President's budget for fiscal year 2025. Secretary Yellen, in the current budget plan outlined by this Administration it assumes

that the tax cut and jobs provisions will expire at the end of 2025. And under that plan the Child Tax Credit and the standard deduction both would be cut in half.

So my first question, Secretary Yellen, could you walk me through this decision by the Administration, and how you plan to protect the economic security of Americans who qualify, as it is, Americans on the lower end of the economic scale that benefit the most from these two provisions?

Secretary YELLEN. Well, the President's budget is built on a baseline that assumes, as is in current law, that features of TCJA expire. And he makes a number of proposals, but he hasn't offered a detailed plan for how he would meet his pledge to make sure that none—no family earning under \$400,000 would see an increase of their taxes when that occurs.

He has articulated principles that he would take into a negotiation. He has made clear he stands ready to work with Congress, and what the principles would be, that no family making under \$400,000 should see an increase in their taxes. Because that is costly to implement relative to his budget, he will work with Congress to agree on a set of raisers that would cover the cost of that.

Mr. FITZPATRICK. So turning to free trade agreements, this Administration has been interpreting the term "free trade agreements" so broadly that they have expanded it to include critical mineral agreements. Specifically, we saw the USTR brokered a CMA with Japan without any congressional approval for such a deal.

So my next question, Secretary Yellen, is why did the Administration proceed in brokering this agreement without any input from Congress, which it is required to do?

And what plans are there in the future, as far as you are concerned, that the Administration intends to take to ensure that Congress is notified of any FTA between the U.S. and any other country?

Secretary YELLEN. Well, certainly, the Administration agrees that Congress has an important role here.

I think our objectives align in that our objective is to reduce our dependence on China and other foreign countries of concern, and to have more resilient supply chains by producing more at home and importing more from our partners and friends. And in that regard, especially when it comes to critical minerals that we are short of or lack, we are looking to expand sources of supply among our friends.

We have consulted closely with Congress over the last year-and-a-half, with leaderships and staff members of this committee on these matters. We want to be sure that we are working with you and that our incentives are in alignment.

Mr. FITZPATRICK. And lastly, Madam Secretary, I need to address China. I know it has been a topic of robust discussion today.

China currently controls up to 50 percent of the electric vehicle battery supply chain. Troubling, to say the least. Your Treasury Department put out a rule this past December that defined battery component in a way that effectively favors Chinese manufacturers. Specifically, under this rule a foreign entity of concern can produce all materials and parts of the battery component, and the electric

vehicle can still remain eligible for a tax subsidy. I know this was raised earlier.

So Madam Secretary, just lastly, can you please speak as to why the Treasury decided to define battery components this way?

And can you explain what your Department is doing to help U.S. manufacturers and not Chinese manufacturers?

Secretary YELLEN. I mean, I would be glad to get back to you and try to understand better what you are focusing on here, but the FIAC rules are very strong, and indicate that battery components starting this year made by a foreign entity of concern can't be included in any car that receives the \$7,500 credit. Next year that expands to critical minerals and their processing.

Mr. FITZPATRICK. I have a follow-up with you, Madam Secretary. We will do that, but my time has expired.

Mr. Chairman, I yield back.

Mr. HERN. I thank the gentleman. The gentlelady from Texas, Ms. Van Duyne.

Ms. VAN DUYNE. Thank you very much.

Secretary Yellen, earlier today you committed to closing the carried interest loophole. Unfortunately, this has become a popular punch line that is just not true.

For a lot of new and emerging entrepreneurs across the country who don't come from Wall Street or wealthy backgrounds, carried interest is the sweat equity that they have put into their business. It is the work that they have put into growing their business. And I look forward to working with my tax team colleagues to better educate Members of Congress on the opportunity that carried interest provides, and the longstanding tax policy principles that it is based on.

Last year you testified and said, "Progress has been made on inflation, but there is still work to be done." Unfortunately, not much has changed in the last year. Inflation hasn't gotten any better. Energy prices haven't gotten any better. And we continue to see housing prices at record highs. Under this Administration prices have increased nearly 20 percent and real wages have fallen by nearly four percent. That affects people who are making less than \$400,000. And yet the President's budget put out earlier this year continued growth policies that exacerbate this problem.

In your testimony you claim the Administration is taking actions to bring down the cost of key household expenses like energy. But that is not true. The Biden Administration's desire to harm American energy continually through tax increases on domestic energy production is the weaponization of the tax code against all Americans, including those making less than \$400,000.

During your Senate Finance hearing, you said traditional energy companies have had significant tax benefits that tilted the scales. In the Treasury Green Book, the Administration's tax proposal says, "These traditional oil, gas, and coal preferences encourage more investment in the fossil fuels section that would occur in a neutral system, and this market distortion is detrimental to long-term energy security."

Do you really believe that oil and natural gas production is detrimental to the long-term energy security?

Secretary YELLEN. Well, to give preferences right now, when we understand the——

Ms. VAN DUYNE. Aren't you doing that with green new policy deals, giving preferences, picking winners and losers?

Secretary YELLEN. Well, we pick winners and losers, but they have to be ones that are positive for what is an existential threat, which is climate change.

Ms. VAN DUYNE. Okay. So you believe, then, that oil and gas natural production is an existential threat, and that that is somehow better to cut all of that production for our——

Secretary YELLEN. No——

Ms. VAN DUYNE [continuing]. Long-term energy security?

Secretary YELLEN. No one is saying to cut all that production.

Ms. VAN DUYNE. So some is——

Secretary YELLEN. There is no—we will be dependent on this for——

Ms. VAN DUYNE. I reclaim my time. This Administration's goal——

Secretary YELLEN [continuing]. A long time, but there is no reason——

Ms. VAN DUYNE [continuing]. To shut down—the Administration's goal to shut down energy companies and change the rules to basically make it impossible to operate profitably.

Secretary YELLEN. It is not—that is not the Administration's objective, but there is no reason why we should be giving tax preferences——

Ms. VAN DUYNE. But is tilting the scales toward green energy worth the security risk by buying oil from adversaries such as Venezuela?

Secretary YELLEN. We are promoting clean energy and renewables——

Ms. VAN DUYNE. We are buying it from countries——

Secretary YELLEN [continuing]. In order to——

Ms. VAN DUYNE. We are buying it from countries that produce it in a much dirtier manner than any place in the U.S. And that is——

Secretary YELLEN. We are going to switch to renewables.

Ms. VAN DUYNE [continuing]. What your policies are forcing us to do right now.

Earlier you talked about the corporate rate in the U.S., as my colleague, Congressman Moore, has alluded to, the U.S. has been at a "race to the bottom." Did the Tax Cut and Jobs Act lower the corporate rate to the lowest in the OECD?

Secretary YELLEN. It is among the lower in the OECD.

Ms. VAN DUYNE. I fail to see how this is the bottom, then.

I mean, under the President's budget, according to the Tax Foundation, the U.S. would have the second—not the lower to the bottom, but would have the second—highest corporate rate in the world. Is this something that the Treasury is proud of?

Secretary YELLEN. Over decades, corporate tax rates have declined——

Ms. VAN DUYNE. It would be the second-highest——

Secretary YELLEN [continuing]. Around the world.

Ms. VAN DUYNE [continuing]. Corporate rate in the world.

Secretary YELLEN. I don't believe that 21 percent is the second-highest—

Ms. VAN DUYNE. I have other questions, but I also want to—
Secretary YELLEN [continuing]. In the world. That is certainly not—

Ms. VAN DUYNE [continuing]. Make sure that some of my other colleagues have an ability to ask them.

With my one minute left, I yield.

Mr. HERN. Madam Secretary, I know we are close to your time, but I would ask for your indulgence to our Democrat on this side over here, Mr. Beyer from Virginia.

Mr. Gomez, okay, from California.

Mr. GOMEZ. Thank you so much, Mr. Chairman. Mr. Beyer and I will be splitting this five minutes, so I will be quick. We took care of Jimmy Panetta so he couldn't get back in time, so we get the last five.

One of the things is—first, let me just say I recognize that the President's budget proposal for fiscal year 2025 invests in working and middle-class families by making child care and housing more affordable. And these are two issues that I don't think we give a lot of attention to.

Last year, during a retreat with the Ways and Means Democrats, Jack Lew came by and said there is two issues that in the near and long term will be dragging down the growth of our GDP: child care and housing. And it makes sense when you see almost those 2 issues combined eat up about 60 percent of a family's income, pre-tax.

So one of the things we are trying to do through two caucuses I started was—the Congressional Dads Caucus—is child care, the Child Tax Credit. How do we focus on that? And then, at the same time, when it comes to more housing affordability. So I am going to kind of go out of order since we have limited time on my questions.

But Secretary Yellen, can you detail actions the Administration is taking to provide desperately needed relief for America's renters?

Secretary YELLEN. We are really looking to expand through any number of tax proposals and through expanding LIHTC, the supply of affordable housing. It is a critical problem facing America.

Mr. GOMEZ. And one of the things that we see in my district, 78 percent of my district is renters. We know that this is getting worse. And also, even on the other side of the aisle, I have conversations with a representative from Nebraska, and I asked him, what is the number one issue facing your district? And he said housing affordability. So I think it is an issue that we need to tackle.

Additionally, we know the Child Tax Credit had such an impact when it came to reducing child poverty in this country by making it fully refundable but also advanceable. I believe that advanceability is not given a lot of attention that it should get and should receive because, as a working-class person, \$200, \$300, \$500 a month means that you can use that for formula, diapers, all those monthly expenses.

Would you agree that paying the CTC on a monthly basis, which I know that we can do, rather than yearly, would help maximize the CTC's power to help working families?

Secretary YELLEN. Yes, it would. I think it was very important, and the Internal Revenue Service worked very hard to make sure they implemented that right away. It was in the middle of the pandemic, and it required an heroic effort, but it made a big difference and we are very supportive of it.

Mr. GOMEZ. Thank you. And with that I will yield the rest of my time to Mr. Beyer.

Mr. BEYER. Thank you, Mr. Gomez.

Madam Secretary, I greatly appreciated seeing your proposal for a minimum income tax of 25 percent on the ultra-wealthy. I was proud to work with Steve Cohen to turn this into legislation. Many cosponsors.

It is ridiculous that the wealthiest 0.001 percent of Americans, on average, pay effective rates in the single digits. Many of them pay nothing. Can you talk to us about how that minimum tax would work?

Secretary YELLEN. Yes. The President's budget would impose a minimum tax of 25 percent on total income, and income would include unrealized capital gains. It would only apply to taxpayers with more than \$100 million in wealth, and it would not require, for those taxpayers who have highly illiquid assets, they could defer payment of it. Others could pay in installments so that it wouldn't be a huge hit in the first year.

But right now, many wealthy people really never pay taxes on that during their lifetime. They borrow against it, live very well, and often can pass it on with step up of basis at death so that no one ever pays taxes on that, on those gains.

Mr. BEYER. Thank you very much. One last question in 25 seconds. Are you thrilled with Direct Files so far?

Secretary YELLEN. It is going great. It has gone really well. We are going to provide a thorough assessment, but all the anecdotal evidence we hear, people have really appreciated it, found it easy to use. It saved them, on average, \$270 and something like 12 hours of work to file their taxes. And it is a great option.

Mr. BEYER. Thank you very much.

And I yield back.

Mr. HERN. Thank you.

Madam Secretary, this is your option. We have one member left. He can submit his questions, and he will give you those questions, or he can go now and—

Secretary YELLEN. Go for it. Go for it.

Mr. HERN. Thank you for your indulgence.

Secretary YELLEN. Last one.

Mr. FEENSTRA. Thank you, Secretary Yellen. I truly appreciate you being here and at least giving me some grace and giving me some time. Thank you very much.

So last week I sent you a letter on the decision by USTR to reverse digital trade policy at the WTO, which I would like to submit for the record. With the decision, the USTR determined that it will no longer defend against foreign governments' demands for Amer-

ican businesses to locate facilities, equipment, employees, and intellectual properties in those countries.

In the Pillar One negotiations, market countries have sought taxing rights over companies selling into them, but those taxing rights are allocated on paper only, as we know. The local data storage requirements that would proliferate around the world do the opposite, reallocating taxing rights not on paper, but instead reallocating real economic assets that create a taxable presence in those countries.

So in this year's Green Book, the President notes the concern of undesired incentives to locate certain economic activities abroad. But if local data storage requirements are allowed to proliferate, U.S. businesses will face not only an incentive to invest abroad, but will require to do so. This newly allowed method of discriminatory targeting of the U.S. companies for tax revenue is going to cost us, obviously, jobs and investment and IP transfers.

So my question is, Secretary Yellen, did the Department of Treasury consult with USTR on the likely tax and economic impacts of this decision?

I mean, did you guys work together? Did you talk about it at all?

Secretary YELLEN. Well, this was really USTR's decision, and I honestly have to defer to USTR when it comes to Ambassador Tai's position that she has taken on the—you are talking about the WTO situation with digital trade.

When it comes to Pillar One, we have had interagency coordination, and our position on this really remains completely unchanged. We are trying as hard as we can to get rid of digital service taxes that we regard as discriminatory against U.S. firms.

Mr. FEENSTRA. And thank you for that. But you know it very well. If you look at it, I mean, obviously, our multi-nationals will have to build infrastructure, and that, obviously, will cost these companies jobs, and cost taxes that could be paid here.

I mean, how do we square that up?

Secretary YELLEN. You mean because of the WTO position?

Mr. FEENSTRA. Yes.

Secretary YELLEN. I am sorry. You know, I really just can't—I haven't been involved in that at all. We have generally opposed data localization requirements, and I don't think that has really changed significantly. But I honestly have to defer to USTR on that issue.

Mr. FEENSTRA. Okay, and I appreciate that. I mean, it just seems like everybody is at odds here. The USTR is at odds with the Treasury. I mean, I just—and the WTO, I mean, I don't quite—I think we are going in two opposite directions.

And I think the thing that we don't want is where our multi-nationals are paying taxes to other countries, and other countries are using us for a piggy bank. And I just feel like we are swaying that direction. Do you see that at all? I mean—

Secretary YELLEN. Well, we are really trying to oppose that in the Pillar One negotiations. We are trying to get rid of digital service taxes that are being imposed on our firms.

Mr. FEENSTRA. Well, I would really appreciate that. I mean, but continue to look at that. Please do a deep dive into this, because what is going to happen is we are going to lose a lot of dol-

lars when these infrastructures get moved to other countries, and losing jobs and IP transfers. So if you could.

With that I will close down my comments. Thank you for being here.

Mr. HERN. Madam Secretary, we would not want you to leave here without getting high praise and accolades from the gentleman from California, because I am sure that is what he wants to heap upon you on your way out.

So Mr. Panetta, you are recognized.

Mr. PANETTA. Thank you, Madam Secretary.

Thank you, Mr. Chairman.

Madam Secretary, I will be quick. I will focus on just one issue, and it is one that is important to me and my constituents in the 19th Congressional District, and that is housing costs.

As you know, researchers have found that high housing costs can strain a local economy by slowing employment growth. If housing is unaffordable, local companies can struggle to attract and recruit workers. I have long advocated, especially on this committee, for building of more workforce housing, for making sure that there is a first-time home buyer's tax credit, for doubling the capital gains tax on home sales. We want to make sure that there is these types of tax credits to bolster housing.

Can you explain how investment in housing, like the areas that I have talked about, can support the economy?

And would the Department of Treasury support these types of investments, especially in workforce housing?

Secretary YELLEN. Well, we are very concerned about shortage of affordable housing in places like California, but also many parts of the country. The President is doing everything he can to promote affordable housing. There are many proposals in the Green Book, including expansion of LIHTC and credit for first-time buyers and sellers of houses to get rid of some of the lock-in that has occurred because of the increase in mortgage rates.

Mr. PANETTA. And I agree with you on the LIHTC, and I am a big supporter of LIHTC. However, what I found, especially in the 19th Congressional District, you have a number of people who work in our district, but they don't qualify for low-income housing. That is why I believe workforce housing is very, very important to ensure that people who work in the district can afford to live in the district. And so I am hoping that workforce housing is something that the Department of Treasury would be interested in.

Secretary YELLEN. We would be glad to work with you on that. We are trying to do everything we can in this area.

Mr. PANETTA. And I will take that as a closing answer. Thank you, Madam Secretary.

I yield back.

Secretary YELLEN. Thank you.

Mr. HERN. I thank the gentleman.

Madam Secretary, thank you for your time here before the committee, and thank you for extending your time.

We stand adjourned, without objection.

Members will have two weeks to submit questions in writing.

Madam Secretary, thank you.

[Whereupon, at 2:27 p.m., the committee was adjourned.]

MEMBER QUESTIONS FOR THE RECORD

QUESTIONS FOR THE RECORD

U.S. House of Representatives
Committee on Ways & Means

“Hearing with Treasury Secretary Janet Yellen”
April 30, 2024

Witnesses:

**The Honorable Janet L. Yellen, Secretary,
Department of the Treasury**

Questions for the Record Submitted by Chair Jason Smith**Question 1**

Between passage of the Inflation Reduction Act and the close of the most recent tax filing season, what was the total federal government spending incurred to build, maintain, and administer the Direct File program?

- a. Please provide a breakdown of how the funds were used by the IRS.*
- b. Please provide a breakdown of spending incurred by the U.S. Digital Service, or any other federal government entity, or by any third parties to build, maintain, and administer the Direct File program.*
- c. Please describe any spending that is expected to be incurred after the end of the most recent tax filing season.*

Answer: A full accounting of Direct File costs was provided after the conclusion of the pilot. Through April 20, 2024, the IRS spent \$24.6 million on Direct File, which includes \$11.6 million in costs for the development of the 2023 report to Congress. Of the \$13 million spent on the 2024 pilot development and implementation, \$10.6 million is technology and product development costs and \$2.4 million is operation costs (customer service, cloud computing, user authentication, etc.). These totals do not include the in-kind support received by USDS, which the IRS estimates at \$7.2 million on an annualized basis.

Looking ahead, the IRS plans to expand the tool's functionality, what filers can claim, and where it is offered for Filing Season 2025 and beyond. Total costs for expanding Direct File will depend on the scope of the product and service offered as well as the number of filers that elect to use it. The IRS will continue to share this information each year as it becomes available.

Question 2

Did the IRS reallocate funds obligated to other programs or initiatives to build the Direct File program, maintain the program during testing and pilot phases, or support any other past or ongoing activities related to Direct File?

- a. If so, please provide a breakdown of such spending, including the amount reallocated, the original source of the funds, and where the funds were spent.*
- b. If not, please explain the original source of the funds allocated to build, maintain, and administer the Direct File program.*

Answer: The IRS invested resources from the IRA to cover the \$24.6 million required to produce the 2023 Report to Congress and develop and implement Direct File for the 2024 pilot.

Question 3

The result of the OECD Pillar I negotiations was scheduled for release in March 2024, with countries finalizing agreement text by June 2024. It's now the middle of May and we haven't seen any progress.

a. *What is the status of the OECD Pillar I negotiations?*

Answer: While we had hoped to finalize the text of a Pillar 1 multilateral convention (MLC) earlier this year, we have been able to narrow the outstanding issues significantly and countries have chosen to remain at the table. We are focused on bridging the remaining gaps as soon as possible.

b. *When do you anticipate the agreement text to be released?*

c. *What criteria will you use to determine whether the United States will support and sign the agreement, and will you consult with Congress prior to making that final determination?*

Answer: Draft text of the Pillar 1 MLC was released on October 11, 2023. Treasury initiated a public consultation related to that text. Based on the feedback from stakeholders we received, and from our bipartisan, bicameral consultations with congressional staff, we continue to negotiate on a mandatory and robust Amount B (the package of provisions related to streamlining transfer pricing rules for common cross-border transactions to reduce tax disputes), which we are seeking to resolve before finalizing the Pillar 1 MLC. Any final agreement must aim to achieve Pillar 1's underlying goals of tax stability and certainty.

Question 4

Notwithstanding continued efforts to reach an agreement on OECD Pillar I, in order to protect American interests, a contingency plan must be in place, in case an agreement on OECD Pillar 1 ultimately cannot be reached.

a. *Has Treasury convened interagency discussions on actions that the United States will take to protect American interests, in case an agreement on OECD Pillar 1 is not reached?*

- b. *Have you met with Ambassador Tai to examine ways in which the United States will respond to foreign countries imposing unilateral, discriminatory digital services taxes and other similar measures?*
- c. *How have Treasury and USTR made clear that the United States will not stand idly by while foreign countries attack American companies and workers with digital services taxes and other similar measures?*

Answer: We engage in extensive interagency coordination regarding the Administration's position on Pillar 1 and on our opposition to discriminatory digital services taxes, including with USTR, at all levels. We have consistently conveyed to our negotiating partners that we oppose unilateral, discriminatory DSTs.

Question 5

Foreign countries typically considered "investment hubs" or "tax havens" have made clear that they intend to remain competitive for inbound foreign investment by implementing OECD Pillar 2 top-up taxes alongside Qualified Refundable Tax Credits (QRTCs) that replace the economic benefits of the previous low income tax rates. There are recent news reports about these efforts in jurisdictions such as Bermuda, Singapore, Vietnam, and Indonesia.

- a. *Why has Treasury allowed the OECD Pillar 2 agreement to include such a significant QRTC loophole for foreign countries, while the U.S. GILT! regime functions as a strong anti-abuse rule with no such loophole?*
- b. *Why did Treasury allow favorable treatment for foreign countries' QRTCs, while less-generous non-refundable tax credits in the United States, including the R&D tax credit, are penalized?*
- c. *You mentioned that Treasury would like to improve the result for the U.S. R&D tax credit. How and when does Treasury intend to reach agreement on a solution that protects the U.S. R&D tax credit?*
- d. *If agreement is not reached on a solution that protects the U.S. R&D tax credit, how does Treasury intend to protect U.S. companies and workers from being targeted for R&D activities in the United States that may drive the company's U.S. effective tax rate below 15 percent?*

Answer: We have indicated to our Inclusive Framework negotiating partners that addressing issues related to the treatment of the U.S. R&D tax credit is a priority for Congress and the Treasury Department. We are currently focused on resolving this issue multilaterally, which requires developing a path forward that can be adopted by consensus among all Inclusive Framework countries. We would be happy to follow up with you and your staff as that work continues.

Question 6

Please provide a list of countries that have adopted OECD Pillar 2 global minimum taxes, along with a list of each QRTC currently in law in each such country.

Answer: While many countries have moved forward with incorporating the Pillar 2 Model Rules into their domestic regimes, the status of rule adoption, implementation, legislative and regulatory consideration, and every possible qualified refundable tax credit across these countries is fluid across jurisdictions and implicates questions of foreign law and foreign legislative processes. There are public and OECD resources available on a number of these issues. If there is a particular jurisdiction or refundable tax credit that is of concern to you, we would be happy to follow up with you.

Question 7

The United States has bilateral tax treaties with many foreign countries that intend to impose a UTPR surtax on U.S. companies. The result could be a tax on business profits of U.S. companies that exceeds that which is attributable to the permanent establishment in the other country.

- a. *How does Treasury plan to respond if a taxpayer makes a competent authority request, where the taxpayer believes that the actions of a treaty country result or will result in the taxpayer being subject to taxation not in accordance with the applicable bilateral tax treaty due to an attempt to levy a UTPR surtax on U.S. income?*

Answer: To the extent that a treaty partner acts inconsistently with their treaty obligations with respect to U.S. residents, the U.S. Treasury is ready to support those residents.

Question 8

Under the *Inflation Reduction Act*, Democrats enacted massive new corporate tax subsidies for investments that favor their "Green New Deal" agenda. Our geopolitical adversary, China, dominates the supply chains for many products eligible for the corporate tax subsidies, creating in some cases an uncapped windfall to the Chinese Communist Party. The Section 30D clean vehicle tax credit attempts to limit the billions of dollars flowing to China, though recent Treasury regulations have weakened the Section 30D restrictions to allow more money to flow to foreign entities of concern and critical mineral producers from China and other foreign adversaries.

- a. *By not requiring manufacturers to trace all critical minerals and materials, including graphite, the improper payment rate for the Section 30D credit, compared to the law as enacted, is likely to be 100 in 2025.*

- b. *Why has Treasury created a rule that will result in an astronomical improper payment rate?*
- c. *Why did Treasury fail to implement the law as enacted, and in contraction of clear Congressional intent? Shouldn't there be a higher, not lower, level of protection against critical minerals and foreign entities of concern from China, given their stated intention to dominate "Green New Deal" supply chain and force Western companies to be dependent on Chinese inputs?*
- d. *In what other ways is Treasury willing to promote Democrats' "Green New Deal" agenda with windfall payments to the Chinese Communist Party?*

Answer: Under the final regulations, as under the statute, if a vehicle's battery has battery components manufactured or assembled by a foreign entity of concern, the vehicle is not eligible for the Section 30D clean vehicle credit starting in 2024. Starting in 2025, if a vehicle's battery has critical minerals that are extracted, processed, or recycled by a foreign entity of concern, the vehicle is not eligible for the Section 30D clean vehicle credit. The final regulations provide rules to ensure program integrity and prevent improper payments. The final regulations also detail how automakers must comply with the law's sourcing requirements, including the due diligence they must undertake, upfront review of automaker's compliance with the law's sourcing requirements, and the certifications they must provide under penalties of perjury.

Consistent with the statute, the final regulations adopt the definition of a foreign entity of concern in the Department of Energy's final interpretive guidance interpreting the statutory definition in Section 40207 of the Bipartisan Infrastructure Law. That guidance clarifies the definition of a foreign entity of concern, which includes entities "owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is a covered nation" including China.

The final regulations are fully consistent with the statute and will advance the goals of resilient supply chains and clean energy security. In developing the final regulations, Treasury carefully considered all of the public comments received on the proposed regulations and consulted extensively with interagency experts, including the Department of Energy.

Questions for the Record Submitted by Representative Mike Kelly

Thank you for your testimony to the Ways and Means Committee on Tuesday, April 30th. It is important for Congress to understand whether and where opportunity zone investments are happening in rural areas. Typically use "non-metro" to mean rural (the non-metro framing was incorporated into the OZ eligibility criteria (MFI) calculations, for example). Under Treasury's methodology, 23 percent of designated Opportunity Zones are in non-metro areas and 13.6 percent of opportunity zones are classified as rural in the report.

Question 1

Could you provide information on how you define urban, non-metro, and rural opportunity zones?

Answer: In July 2023, the Office of Tax Analysis published a working paper "Use of the Opportunity Zone Tax Incentive: What the Data Tell Us." The OTA Working Papers Series presents original research by the staff of the Office of Tax Analysis. These papers are intended to generate discussion and critical comment while informing and improving the quality of the analysis conducted by the Office. The papers are works in progress and subject to revision. Views and opinions expressed are those of the authors and do not necessarily represent official Treasury positions or policy.

The authors estimate that 86 percent of OZs are urban and 14 percent are non-urban. The authors do not estimate the share of OZs that are non-metro or rural. OZs were classified as urban if more than 50 percent of the housing units in the tract were classified as urban housing units by the Census Bureau.

Question 2

Can you share the following statistics urban, non-metro, and rural areas as well?

- a. Number and share of opportunity zone tracts registering investment;*
- b. Number of unique opportunity zone investments; and*
- c. Amount of opportunity zone investment.*

Answer: In the working paper referenced above, the authors estimate that urban OZs accounted for 96 percent of qualified OZ property investment in 2019 and 95 percent in 2020. Total qualified OZ property investment for which location information was reported in 2020 was \$38 billion. The other statistics you request are not readily available.

Question 3

When does Treasury plan to release new data on opportunity zone incentives?

Answer: Treasury staff continue to conduct research on Opportunity Zone incentives, as they do numerous other features of the tax system, but there are no releases scheduled at this time.

Question 4

This information is crucial to this committee and the public and will help shape future policy efforts and improve our understanding of the evolution of the Opportunity Zone marketplace. Finally, I request clarity on the timeline for the release of new data on the Opportunity Zones incentive, and at which you plan to publish further reports on the policy.

Answer: See above.

Questions for the Record Submitted Representative David Schweikert**Question 1**

When the current debt limit suspension expires, what should we expect the cash balance to be in the TOA?

Answer: Treasury announces its assumed end-of-quarter cash balances as part of its normal Quarterly Refunding financing estimates release process. In its October 28, 2024, release, Treasury announced an end-of-December 2024 cash balance of \$700 billion. Treasury also noted that “this assumption is based on expected cash flows under Treasury’s cash management policies and is consistent with its authorities and obligations, including those under the Fiscal Responsibility Act of 2023. The actual cash balance on January 1, 2025, may vary from this assumption based on changes to cash flows near the end of 2024.”

Question 2

When the debt limit is reinstated on January 1st, Treasury will take extraordinary measures to ensure the federal government's obligations are met.

a. *Will you commit to publishing daily the extraordinary measures taken?*

Answer: On January 2, 2025, Treasury will need to begin using extraordinary measures if the debt subject to limit would otherwise increase above the limit newly established under 31 U.S.C. 3101(b) In recent debt limit impasses, Treasury has published a description of certain extraordinary measures on or about the date measures are first needed and would anticipate doing so again if Congress does not act timely to suspend or increase the debt limit. At times during recent impasses, Treasury has also published a summary of daily extraordinary measures used and will consider doing so again in the event of a prolonged impasse. In addition, each day Treasury publishes the Daily Treasury Statement, which includes detailed information about the debt subject to limit and public debt transactions.

Question 3

In the July 28, 2023 Mid-Session Review, Treasury's operating cash balance was expected to be \$600 billion in 2024. In the March 11, 2024 President's budget, Treasury's operating cash balance was expected to be \$800 billion in 2024. Over the past week, the balance of TOA has been over \$900 billion.

a. *How do OMB and Treasury determine the expected operating cash balance?*

Answer: Treasury seeks to maintain funds sufficient to cover its one-week ahead cash

need, which includes both net fiscal outflows and the gross volume of maturing marketable debt. Variations in cash flows over time result in Treasury's liquidity needs differing significantly week-to-week, but Treasury seeks to change auction sizes gradually to minimize any potential market disruption. Accordingly, Treasury develops its borrowing plans by evaluating cash flow projections not only for the week ahead but also for subsequent weeks and months. The expected operating cash balance is derived from this process.

- b. *What happened in between July 2023 to March 2024 for the operating cash balance to be increased by 33%?*

Answer: The expected operating cash balance is updated to reflect the latest projections for Treasury's liquidity needs, consistent with its established cash balance policy.

- c. *How are the expected Treasury operating cash balances used in the administration?*

Answer: Treasury's operating cash balances are used to meet all of the government's financial obligations.

Question 4

As the weighted average maturity of outstanding public debt has decreased, the amount of debt refinanced weekly is at historic highs.

- a. *How does the composition of the debt effect the level of cash in TOA?*

Answer: To the extent that the volume of maturing securities in a given one-week ahead period increases/decreases, Treasury's cash needs would (all else equal) increase/decrease to remain consistent with the longstanding Departmental policy described above.

- b. *How could this affect negotiations when the debt limit suspension expires?*

Answer: The composition of the debt does not affect the need to raise or suspend the limit.

Questions for the Record Submitted by Representative David Kustoff**Question 1**

Secretary Yellen, the IRS announced in April that 141,000 filers have used Direct File so far this year. How many of the 141,000 returns received in Direct File during the pilot were flagged for potential fraud and/or sent to special processing?

Answer: See answer to Question 2 below.

Question 2

Of those sent to special processing, how many were rejected?

Answer: The IRS is not in the practice of releasing the requested information for individual tax filing options or services taxpayers may choose to use, including Direct File, Free File, or other options provided by commercial providers. However, the IRS is committed to ensuring Direct File is a secure, accurate, and easy-to-use direct e-filing system. Direct File joined the Security Summit public-private partnership and implemented all of the Summit's Trusted Customer protections, which it has developed to reflect insights gained over more than two decades of e-filing. The IRS has not identified new threats associated with Direct File or with the system's IAL2 identity verification.

Question 3

The IRS said it spent \$24.6 million on the pilot this year, which differs from the GAO report that found the total cost was \$129 million. How much has the IRS spent on the creation of Direct File so far not annually just this year, but cumulatively up to this point?

- a. *Please include any funds that the Treasury Department has spent on Direct File;*
- b. *Please include funds you've spent on advertising and promoting Direct File;*
- c. *Please include resources from the OMB Digital Service team, which I understand has also been involved in the development of Direct File.*
- d. *Additionally, please include other vendors or federal agencies you have used or are currently using and the costs associated with them.*

Answer: A full accounting of Direct File costs was provided after the conclusion of the pilot. Through April 20, 2024, the IRS spent \$24.6 million on Direct File, which includes \$11.6 million in costs for the development of the 2023 report to Congress. Of the \$13 million spent on the 2024 pilot development and implementation, \$10.6 million is technology and product development costs and \$2.4 million is operation costs (customer

service, cloud computing, user authentication, etc.). These totals do not include the in-kind support received by USDS, which the IRS estimates at \$7.2 million on an annualized basis. No federal funds were expensed on advertising Direct File.

Questions for the Record Submitted by Representative Michelle Steel**Question 1**

I'm deeply concerned about a number of this Administration's policies when it comes to international tax issues, and I'm especially concerned about their proposal once again to repeal FDII. FDII encourages companies to develop and commercialize their valuable intellectual property here in the United States. That's a win-win for American innovation and American workers, because it encourages companies to have R&D and jobs here in the U.S. And it's a win for American revenue because it makes sure the U.S. will have the first right to tax that income rather than other countries getting the first bite at the apple. Repealing it would be disastrous and would create a new tax advantage for offshoring intellectual property.

This Administration's budget proposals are actually even worse collectively, because you also propose increasing the corporate rate, so income that's currently taxed at 13.125% under FDII would be taxed at 28%, while the same income would be taxed at 21% if the intellectual property rights are held offshore. This would not only penalize companies who have done what we've tried to encourage and located their IP here in the United States, it would also make the rates at which this income is taxed totally uncompetitive globally. How could penalizing companies who locate their IP in the U.S. while incentivizing others to offshore their IP possibly be viewed as sound tax policy? Shouldn't U.S. policy ensure that we don't intentionally place intellectual property held here in the U.S. at a disadvantage compared to intellectual property held offshore?

Answer: FDII is not an effective way to encourage research and development (R&D), it incentivizes the offshoring of certain economic activity, and it reduces federal revenues.

FDII provides large tax breaks to companies with excess profits – who are already reaping the rewards of prior innovation – rather than incentivizing new domestic investment. Further, FDII disadvantages domestic producers, offering tax incentives only to those companies with high export sales, rather than those with significant domestic sales.

In addition, FDII creates undesirable incentives to locate certain economic activity abroad. Because the preferential FDII rate applies to income in excess of a domestic corporation's tangible assets, firms can lower the hurdle necessary to obtain preferential tax treatment by reducing tangible investments in the United States. Coupled with the current global intangible low-taxed income (GILTI) regime, there is a strong incentive for companies to offshore plants and equipment, since moving equipment offshore both increases the tax-free return under GILTI and increases the tax deduction under FDII.

Finally, eliminating FDII would raise significant revenue that can be deployed to incentivize R&D in the United States directly and more effectively.

Question 2

The Notice of Proposed Rulemaking on the Section 45V hydrogen production tax credit, issued on December 26, 2023, contains a section on renewable natural gas (RNG) and fugitive sources of methane that states that the Treasury Department and the IRS “intend to provide rules” addressing these hydrogen production pathways. The proposed amendments to 26 CFR Part 1 do not address RNG. Does the Department intend to formally propose rules on this topic prior to issuance of a final rule? Does the Department consider the treatment of RNG under 45V to be in a pre-regulatory phase or has the regulatory process started?

Answer: The Notice of Proposed Rulemaking on the section 45V Clean Hydrogen Production Credit stated certain rules that Treasury and IRS intend to propose relating to hydrogen production pathways that use renewable natural gas (RNG) and fugitive sources of methane. The NPRM specifically sought comment on book-and-claim systems, analysis of lifecycle greenhouse gas emissions, and a number of other issues relating to RNG and fugitive methane. Treasury and IRS are carefully considering the public comments received on the section 45V Notice of Proposed Rulemaking before issuing a final rule, and we continue to work closely with expert agencies. The comments received on the section 45V proposed rules will inform future guidance on the credit.

Questions for the Record Submitted by Representative Randy Feenstra

Question 1

At the hearing, during my questions on USTR's decision to reverse longstanding U.S. policy on digital trade, you stated that you "were not involved in the decision" and that [the Department of the Treasury] "has not typically supported local data storage requirements". While I understand your position that this decision belongs in the jurisdiction of the U.S. Trade Representative, I argued in April 26 letter sent to you that, given the significant economic and revenue implications, the decision should not have been made without consultation with the Department of the Treasury.

- a. *By stating that you "were not involved in the decision", did you mean to suggest that this decision by USTR was not first subject to an interagency review process?*

Answer: I am not aware of how USTR made the decision to withdraw U.S. attributions from certain provisions of the WTO Joint Statement Initiative on E-commerce. We remain at the table to represent our interests in the WTO's Joint Statement Initiative on E-Commerce, and we also look forward to working with Members of Congress to support the legislative process on privacy, competition, and digital regulation.

- b. *By stating that the Department of the Treasury "has not typically supported local data storage requirements", did you mean that the Department has since changed its position on this policy, or that you are in opposition to the policy decision by USTR?*

Answer: The administration continues the United States' long-standing support for the flow of data and an open Internet with strong and effective protections for individuals' privacy and measures to preserve governments' abilities to enforce laws and advance policies in the public interest.

- c. *If you have not provided an estimate of the revenue and economic implications of USTR's reversal on digital trade, do you intend to do so?*

Answer: Treasury's view is consistent with this position. The ability to transfer data across borders is critical for financial stability and the functioning of the financial system, and data restrictive policies can have unintended consequences for risk management, cybersecurity, and regulatory access to data. Nonetheless, financial services suppliers' right to choose the location of their computing facilities should be subject to legitimate public policy exceptions such as for national security, personal privacy protection and prudential reasons.

- d. *What is your assessment of the potential revenue effects of the decision?*

Answer: Treasury has not produced a revenue estimate of the decision.

Question 2

The Department of the Treasury recently released final guidance implementing the new 40B Sustainable Aviation Fuel (SAF) Credit only eight months before it is set to expire at the end of this year, making it unlikely any fuel producer will be able to take advantage of it. Meanwhile, right now, the renewable fuels industry, including Iowa's many biodiesel, renewable diesel and ethanol producers, are making billions of gallons of fuel that will be subject to the 45Z Clean Fuel Production Credit beginning January 1, 2025. These producers are operating with no guidance on the 45Z credit and are unable to establish the price of their fuels or the feedstocks needed to make them. The business uncertainty created by this situation could disrupt project timelines and capital flow and threaten production of the very fuels the credit was meant to incentivize.

- a. *What is the status of the 45Z credit guidance and what is your department doing to ensure it is released as soon as possible?*
- b. *To prevent significant disruption in the fuels market and to have any hope of realizing the vision for the US SAF market, the 45Z guidance must be out before the 4th quarter of this year. What steps are you and the Administration taking to meet this timeline?*
- c. *Short of full guidance soon, will Treasury provide at least partial guidance before the fall sufficient to provide the renewable fuels industry and their suppliers with a clear and smooth transition to this new credit regime?*

Answer: We understand the importance of 45Z guidance to provide certainty to clean fuel producers and other stakeholders. We intend to provide guidance on 45Z by the end of the Administration.

Question 3

Your cabinet colleagues have stated that the 40B guidance was intended to give farmers maximum flexibility and options to maximize their emissions reductions under the program. Unfortunately, the reality of the guidance departs significantly from this vision. Instead of offering a menu of choices of climate smart agriculture practices that farmers can choose to adopt based on the conditions at their location, the guidance instead prescribes an all or nothing short list of practices that must be adopted to receive any emissions reduction credit at all under the 40B program. Many have termed this all or nothing approach to be rigid and impractical, excluding many conservation and sustainability efforts from receiving credit when they should.

- a. *What steps are you taking as the Administration prepares the 45Z guidance to close the gap between the administrations expectations for farmers and the reality on the ground, and ensure that the credit is inclusive of American agricultural producers and all of their sustainability efforts?*

Answer: We intend to provide guidance on 45Z by the end of the Administration.

As you note, Treasury and IRS issued additional guidance on the section 40B Sustainable Aviation Fuel credit on April 30 (Notice 2024-37). In conjunction, the agencies comprising the SAF Interagency Working Group (IWG) jointly announced the 40B SAF-GREET 2024 model. This model provides a further methodology for SAF producers to determine the lifecycle GHG emissions rates of their production for the purposes of the 40B Credit. The 40B SAF-GREET 2024 incorporates new data, including updated modeling of key feedstocks and processes used in aviation fuel and indirect emissions. It also integrates key greenhouse gas emission reduction strategies such as carbon capture and storage, renewable natural gas, and renewable electricity.

Notice 2024-37 established a safe harbor for the use of certain climate-smart agriculture practices for producers who meet the requirements of a USDA pilot program. The approach taken in the Notice was in recognition of the potential climate benefits of CSA practices that sequester carbon and reduce emissions, and to encourage their adoption – but also in recognition of the limitations of currently available verifications mechanisms and empirical data and modeling.

We are carefully considering feedback on the CSA pilot program and other feedback in developing guidance for the section 45Z credit.

Question 4

Secretary Yellen, as I've raised before, Germany is imposing an extraterritorial tax on U.S. companies under section 49 of their tax code. Similarly, Australia is taking aggressive and unilateral positions on payments related to the distribution of software. I appreciate Acting Deputy Assistant Secretary Levine's letter on the software license issue, which was an important step towards addressing this issue. However, I am worried about the ongoing effect of these discriminatory policies towards U.S. companies and the risk of proliferation, like that of digital services taxes.

- a. *What is the Department of the Treasury doing to push back on these aggressive and discriminatory tax positions and protect the US. tax base and competitiveness of US. companies?*

Answer: I agree with your concerns about the tax positions taken by Germany and Australia that you mention above. We will continue to reach out to both countries to express our concerns and push for a satisfactory resolution that protects U.S. taxpayers.

Questions for the Record Submitted by Representative Earl Blumenauer**Question 1**

Secretary Yellen, there is a strong bipartisan coalition in Congress working to close the *de minimis* loophole, a pernicious element of our trade policy facilitating roughly four million uninspected, untaxed packages entering the United States every day. More than half of these shipments come from China. *De minimis* shipments from China have been found to contain items produced with forced labor, consumer product safety violations, and, increasingly, fentanyl and its precursors. A recent report from the House Select Committee on the Chinese Communist Party documented instances where fentanyl and its precursors are shipped to the United States first via *de minimis*, smuggled to Mexico for further processing, and then smuggled back into the United States. The United States government needs a whole-of-government approach to combatting the multifaceted crises for which the *de minimis* loophole is responsible.

The *de minimis* loophole is enshrined in 19 U.S.C. 1321 and, as you know, the Secretary of the Treasury is responsible for administering *de minimis* entry. 19 U.S.C. 1321(b) gives the Secretary of the Treasury the authority to “prescribe exceptions to any exemption... whenever he finds that such action... is necessary for any reason to protect the revenue or to prevent unlawful importations.” There is no question you have the authority to prescribe exceptions to *de minimis* entry and close the loophole.

- a. *How is the Treasury Department utilizing its statutory authority to close the de minimis loophole? Is the Department considering regulatory action to close the loophole? Given the growing concerns voiced about the damage of this loophole on industry, workers, and our ability to police illicit drugs like fentanyl, why hasn't the Treasury Department used its authorities to date?*

Answer: At the end of October 2024, I delegated Treasury’s remaining Customs revenue functions to the Secretary of Homeland Security. This should streamline promulgating regulations under the authority you cite. Treasury meanwhile continues to work with DHS and CBP on proposed regulations that would improve the data collected on low-value shipments. With more data, CBP would be better positioned to target shipments that contain items already prohibited from import into the United States, including narcotics and items produced with forced labor or that violate our consumer product safety rules.

Questions for the Record Submitted by Representative Bill Pascrell

Question 1

Third-party litigation financing (TPLF) involves funders who are not parties to a lawsuit providing funding to litigants in exchange for an interest in the potential recovery in the lawsuit. TPLF is broadly unregulated and has grown in popularity over the last 15 years. Beyond concerns about TPLF's domestic effects on fairness in the justice system, though, foreign competitors may be abusing TPLF. In December 2023, the House Select Committee on the Chinese Communist Party released a report noting that China is using TPLF to obtain sensitive U.S. intellectual property. Obtaining U.S. IP through TPLF helps China gain an unfair advantage over U.S. firms and undermines U.S. competitiveness.

- a. *Does the Department believe action needs to be taken to prevent potential abuse of TPLF by foreign actors like China?*

Answer: Treasury continuously monitors and assesses vulnerabilities and risks that the United States faces, including emerging threats in the context of TPLF. Accordingly, we have held meetings with relevant stakeholders in the public and private sectors to understand risks posed by TPLF. We will continue to work with our colleagues across the U.S. government to better understand the risk environment, share information, and determine appropriate next steps and which agencies' equities may be implicated.

Question 2

The Treasury Department and the Internal Revenue Service (IRS) have worked hard to implement the Inflation Reduction Act (IRA), which is greatly advancing our clean energy future. However, we are still missing important guidance concerning the Section 45U nuclear production tax credit. Section 45U guidance is critical to support our nuclear sector, which is a significant provider of zero-emission energy. It has been almost two years since the passage of the IRA, and I have made clear to the Department time and again that this guidance must be finalized expediently.

- a. *When can we expect guidance concerning the Zero-Emission Nuclear Production Tax Credit under Section 45U?*

Answer: Treasury recognizes the importance of the Section 45U nuclear production tax credit and the need for guidance for taxpayers. We are working to develop guidance on the 45U credit but do not have any additional information on timing to share at this time.

- b. *Will the Department release initial guidance open for public comment by stakeholders before finalizing its guidance for Section 45U?*

Answer: Treasury and the IRS will issue initial guidance providing an opportunity for public comment, and consider all comments received, before issuing final regulations on Section 45U.

Question 3

On February 9, 2022, in my capacity as Chairman of the Ways and Means Subcommittee on Oversight, I wrote to you regarding the report issued by the Bureau of the Fiscal Service on June 17, 2021, entitled “Report for the Redemption of Savings Bonds, Response to Executive Order 13968.” The report found the Treasury Department currently holds nearly \$30 billion in mature unredeemed debt, savings bonds bought years or decades ago by Americans, and documents the problems the Treasury Department is having in locating these bondholders. Reducing this volume of mature unredeemed debt will get more money back into the hands of working families. I appreciate the Department’s response to my letter and have several additional questions.

- a. *Has the Department conducted any analysis showing how much it expects bond redemptions to increase due to the SECURE 2.0 Act, if it is implemented under the proposed regulations issued in October 2023? Does the Department expect these regulations to produce any increase in redemptions?*

Answer: The Department is unable to predict if there will be an increase in bond redemptions due to the implementation of the SECURE 2.0 Act. Once Treasury shares the required savings bond data to the states, it will be up to each state to develop its own outreach method, which is what could produce an increase in redemptions. However, based on the successful outreach that Treasury has conducted over the last several years, we are hopeful that renewed awareness of MUD will increase redemptions.

- b. *The Department’s proposed regulations claim to restrict the states’ use of bondholder information provided by the SECURE 2.0 Act, despite the lack of any language in SECURE 2.0 forbidding or negating escheatment. How does the Department propose to restrict how states can act on information in its possession that is not otherwise restricted by law?*

Answer: Under the proposed regulations, states may use the savings bond information provided under the program to locate savings bond owners, notify them of their bond status, and direct them to Treasury to redeem their bonds should they choose to do so, as expressly authorized in the SECURE 2.0 Act. Nothing in the SECURE 2.0 Act prohibits states from following Treasury’s escheatment process to redeem any unclaimed bonds in their possession.

However, Treasury's regulations restricting the escheat of savings bonds not in the states' possession are still in effect.

The SECURE 2.0 Act does not authorize Treasury to escheat matured unredeemed savings bonds to the states. In 2021, some members of Congress introduced the Unclaimed Savings Bonds Act of 2021, H.R. 4085, 117th Congress; S.2854, 117th Congress, but that bill never passed. The 2021 bill's language specifically allowed not only for the transfer of applicable savings bond information to the states but allowed the states to obtain title to the applicable savings bond through a valid judgment of escheatment and restricted Treasury from restricting the states from obtaining title to the applicable savings bonds. However, that 2021 bill failed to move past the Ways and Means Committee and the Senate Finance Committee. Instead, when a version of the bill reemerged in 2022 as part of the Secure 2.0 Act, the title escheat language had been removed along with the language prohibiting Treasury from promulgating regulations that would preempt state law on escheatment of bonds not in the state's possession.

- c. *The Department has opposed legislation to clear up the state escheatment matter. It has also opposed legislation to require the Department to upload its bondholder records, or even to be appropriated funding to do so. Why has the Department opposed these efforts, while also remaining reluctant to take meaningful steps to reduce the stockpile of mature unredeemed debt?*

Answer: Treasury has been issuing savings bonds to the American public since 1935, resulting in nearly 6 billion bonds issued in the lifetime of the program. Each of these savings bonds represent a contract between the savings bond owner and Treasury and a promise to make payment to the rightful owner when payment is requested. Currently, Treasury has less than 96 million matured savings bonds outstanding, representing 1.6% of all bonds issued. Treasury has worked to reunite savings bonds owners with their funds through TreasuryHunt, the Department's online search tool that allows people to search for their bonds. To date, over 612,000 matches through our Treasury Hunt website, as well as \$464 million in bond redemptions through other MUD outreach programs.

Treasury is invested in assuring that the full proceeds from these bond redemptions are paid to the rightful owners. Proposed legislation to date has called for the escheatment of savings bonds not in the states' possession, which would allow states to keep the funds for their own use or reduce the proceeds due to the rightful owner by subtracting any fees, compensation, commissions, or other remunerations a state or contractor has paid to locate, delivery, recover, or assist in the recovery of the unclaimed property. Consequently, savings bonds owners may not be paid in full for their investment. Further, previous proposed legislation has also failed to relieve the government of the liability to pay savings bond owners when their funds have been escheated to the states. Under the previously proposed legislation, if a state does not approve a savings bond owner's claim for their property, Treasury would be required to make the savings bond

owner whole. At which point, Treasury will have paid the state and the savings bond owner for the same savings bond. This would result in millions of dollars in double payments by Treasury that could not be recouped from the states.

- d. *At the inception of the federal savings bond program and through the World War II defense bond program, the Department assured bondholders that they would keep records to ensure that they can still claim their bonds even if the physical bond is lost. Can the Department show that it has kept this promise, and how many bondholders have been able to claim their bonds despite lacking the physical bond?*

Answer: Treasury has kept its promise and maintained savings bonds records from when bonds were first issued in 1935. Beginning in 2020, Treasury digitized the savings bond records from October 1957 through November 1973, which now makes all savings bonds from October 1957 to present easily accessible and searchable. Treasury is currently evaluating the possibility of digitizing the remaining savings bond records, from 1935 through September 1957.

Treasury has a long history of paying bondholders who have reported their savings bonds as lost, stolen, or destroyed. Since 2014, Treasury has processed over a million savings bond claims for customers who lacked physical possession of their savings bonds, resulting in redemption payments of over \$437 million. Treasury has a claim form for owners who report their savings bonds to be lost, stolen, or destroyed. This form is made available to the bond holders during outreach efforts and through a publicly facing Treasury website. Market research has shown that redeeming savings bonds is customer-driven, meaning savings bond owners are aware they have a bond(s) and choose not to redeem them due to various reasons (e.g., tax consequences or low value of the bond, as most MUD customers have bonds valued at \$150 or less).

Data shows there are spikes in claims redemptions when the bond reaches 20 years of age and at the time the bonds reach full maturity. This would indicate that customers filing for a redemption via a claim form are aware they had the bond and understand the terms of the bond (that the value is guaranteed to double at the 20-year mark for EE bonds and they stop earning interest at 30 years).

Questions for the Record Submitted by Representative Dan Kildee

Question 1

The Section 48D advanced manufacturing investment tax credit was enacted by the *CHIPS and Science Act* to provide an incentive for domestic semiconductor manufacturing. On March 21, 2023, Treasury issued a notice of proposed rulemaking (NPRM) on the credit's eligibility requirements. The NPRM defines "semiconductor" as semiconductor devices only, excluding semiconductive substances such as semiconductor-grade polysilicon. However, the NPRM requested comments on the scope of the definition of semiconductor, specifically asking whether semiconductive substances, such as polysilicon, should be included. Securing and expanding the U.S. supply chain for semiconductors starts with polysilicon. While the U.S. has a technological advantage on polysilicon production, China, and other countries, are catching up. Without support for domestic polysilicon production, the U.S. will become dependent on foreign sources.

- a. *Will the U.S. Department of Treasury (Treasury) allow investments in manufacturing of domestic semiconductor-grade polysilicon to qualify for the investment tax credit under final rules for 48D?*

Answer: Treasury and the IRS issued final rules for the section 48D Advanced Manufacturing Investment Credit (CHIPS ITC) on October 22, 2024, in close coordination with the Department of Commerce. The 48D statute specifies that the CHIPS ITC is only available for property integral to the operation of facilities that manufacture semiconductors or semiconductor manufacturing equipment. The final rules therefore do not expand the scope of the CHIPS ITC to include additional products and substances, such as polysilicon. However, the final rules clarify that semiconductor wafer production includes the production of wafers used for photovoltaic solar energy generation. This clarification in concert with other historic investments made by this Administration is helping strengthen the entire domestic solar supply chain.

Question 2

The *Inflation Reduction Act* included new tax credits to support American solar panel production and installation. These tax credits included a Domestic Content Bonus, intended to spur domestic solar manufacturing. However, the guidance released by Treasury on May 12, 2023 for the Domestic Content Bonus falls short of congressional intent by allowing solar-grade polysilicon and wafers from China or Chinese-controlled supply chains to count toward the Domestic Content Bonus.

- a. *Will Treasury update this guidance to address these "Buy America" gaps and ensure American-made solar-grade polysilicon and wafer production count toward the Domestic Content Bonus?*

Answer: We are committed to ensuring that the domestic content bonus in the Inflation Reduction Act boosts American manufacturing, iron, and steel, in order to promote resilient supply chains as we scale our clean energy economy. Under the Biden-Harris Administration, companies have announced more than \$155 billion in investments in clean power, in addition to nearly \$17 billion in investments in solar manufacturing at 115 new and expanded facilities across the country.

We have already heard how helpful the most recent safe harbor guidance (Notice 2024-41) is in providing additional clarity and certainty to manufacturers and to developers seeking to access the domestic content bonus. Further, as announced in October remarks by Aviva Aron-Dine, Performing the Duties of Assistant Secretary for Tax Policy,¹ we anticipate releasing guidance by the end of the Administration that will update these data, make technical clarifications, improve accuracy, and recognize the benefits of domestic supply chains by differentiating the treatment of solar cells that are manufactured with domestically produced versus imported wafers.

Question 3

Fannie Mae and Freddie Mac, the Government Sponsored Enterprises (GSEs), are important rural Low- Income Housing Tax Credit (LIHTC) investors, commonly investing in rural affordable housing projects through multi-investor funds. Some investors that use LIHTC have raised concerns that the GSEs may be considered tax-exempt controlled entities (TECEs) because of the federal government’s conservatorship of them, a status which would make them unable to use LIHTC. Uncertainty about the tax status of the GSEs has led Fannie Mae to pull out of rural multi-investor funds for LIHTC projects and may further threaten investments in rural affordable housing.

I wrote to the U.S. Department of Treasury (Treasury) on this matter on November 3, 2023, urging Treasury to produce written guidance clarifying the GSEs are not TECEs. I received a response on January 29, 2024, stating that “Treasury and the Internal Revenue Service (IRS) have spent considerable time analyzing the technical issues that have been raised” but “have not yet been able to develop viable administrative solutions that would address this issue in the manner that has been requested, particularly as *potential administrative actions that address the issue from a federal tax perspective may have significant collateral consequences for the GSEs in other areas* [emphasis added].”

- a. *Can you please describe what “significant collateral consequences” would stem from clarifying that the GSEs are not TECEs, to support more investments in rural affordable housing?*

Answer: Under current law, a “tax-exempt controlled entity” is defined as any corporation if 50% or more (in value) of the stock in such corporation is held by 1 or

¹ Remarks by Aviva Aron-Dine, Performing the Duties of Assistant Secretary for Tax Policy, on Phase Four of Implementation of the Inflation Reduction Act’s Clean Energy Provisions; <https://home.treasury.gov/news/press-releases/iv2625>.

more tax-exempt entities. See 26 USC 168(h)(6)(F)(iii). The statutory definition of “tax-exempt entity” includes the United States and all of its agencies and instrumentalities. 26 USC 168(h)(2)(A)(i). If a tax-exempt controlled entity invests alongside taxable investors in a partnership that does not use “qualified allocations,” then current law generally prevents the partnership from using accelerated and bonus depreciation and investment tax credits.

Current law allows a tax-exempt controlled entity to make an election under 26 USC 168(h)(6)(F)(ii) to not be treated as a tax-exempt entity. This election would enable taxable investors to invest in partnerships alongside a tax-exempt controlled entity without foregoing federal tax benefits like accelerated and bonus depreciation and investment tax credits. However, the election would also carry significant collateral consequences for the electing tax-exempt controlled entity and its own investors. In particular, if this election is made, then any interest received or accrued by a tax-exempt entity (e.g., a pension or endowment fund) from the electing tax-exempt controlled entity would become taxable as unrelated business taxable income, as would any gain recognized by a tax-exempt entity on the disposition of an interest in the electing entity. See 26 USC 168(h)(6)(F)(ii)(II). These collateral consequences would likely lead pension and endowment funds and other tax-exempt entities to avoid investments in any debt or equity of the electing tax-exempt controlled entity, making it much more difficult and expensive for the electing entity to raise capital.

Question 4

Have People’s Republic of China (PRC) officials agreed to address overcapacity in areas such as electric vehicles (EVs), and provided any specific commitments to you in this matter? How does the Biden Administration plan to address the increase in low-cost Chinese EV exports, which threaten to harm U.S. exports and American automotive jobs?

Answer: We continue to discuss overcapacity with Chinese counterparts, making clear our significant concerns about the spillovers of China’s over-investment and large-scale government support in specific industrial sectors. I have consistently raised China’s unfair economic practices and overcapacity concerns with my counterparts, from my first visit to Beijing last year to recent meetings in April.

The Biden Administration has taken important steps to level the playing field, using a range of tools to protect American manufacturers who are subject to unfair and heavily subsidized competition. This includes ongoing diplomatic engagement with Chinese counterparts, including through Treasury’s Economic Working Group; historic investments under the CHIPS Act, the Bipartisan Infrastructure Law, and the Inflation Reduction Act; and trade enforcement, including the revised Section 301 tariffs or actions involving anti-dumping or countervailing duties. The results of the Section 301 review outlined strategic and targeted steps that are needed to respond to specific long-standing unreasonable trade practices related to forced technology transfer by China.

Question 5

Deputy Secretary Wally Adeyemo was recently asked if Russian oligarchs were using Third Party Litigation Funding (TPLF) to circumvent the current sanctions on Russia the United States has in place. Deputy Secretary Adeyemo stated, in response to the question: “I think one of the most important things we can do...is additional transparency, better understanding who is funding what will help us better be able to both use our tools but also to make sure the American people are aware of who’s funding these lawsuits.”

- a. *Do you agree with Deputy Secretary Adeyemo that we should have more transparency into TPLF?*

Answer: Sanctions evasion and foreign malign activity are issues that Treasury takes very seriously. We have also long recognized the importance of transparency measures in mitigating risks associated with illicit finance. For example, over the past several months, we have made significant progress on key initiatives to prevent illicit actors from exploiting the U.S. financial system, including by prioritizing successful implementation of the Corporate Transparency Act to curb illicit financial activity that occurs through the misuse of anonymous shell and front companies. We have also taken important steps towards strengthening transparency in the residential real estate and investment adviser sectors.

With respect to TPLF, we continue to study and assess the risks and vulnerabilities that this industry may present to the U.S. financial sector. Because the issue could also implicate equities across the U.S. government, including the Department of Justice, we will continue to consult the expertise of our interagency colleagues with respect to any specific measures to address potential misuse of the U.S. legal system.

PUBLIC SUBMISSIONS FOR THE RECORD



American Citizens Abroad Statement for the Record to
House Ways and Means Committee
Hearing with Treasury Secretary Janet Yellen

April 30, 2024

American Citizens Abroad, Inc. and its sister organization, American Citizens Abroad Global Foundation hereby submit our Statement for the Record.

American Citizens Abroad, Inc. (ACA) is a leading advocacy organization representing Americans living and working overseas. Headquartered in Washington, DC, ACA is nonpartisan, non-profit (section 501 (c)(4)), with a 40-plus-year history of advocating on behalf of the community of Americans living and working overseas. Alongside ACA is its sister charitable (section 501(c)(3)) research and educational organization, American Citizens Abroad Global Foundation (ACAGF).

ACA is grateful to the House Ways and Means Committee for the hearing on taxation and tax policy with Secretary Janet Yellen. Americans abroad have a direct interest in the tax policy and filing matters that will be addressed by Congress and the Biden administration over the next 12 months. We believe there is an opportunity for the U.S. government to resolve some of the serious personal and financial problems that U.S. tax policy causes for Americans abroad because we are misunderstood. We strongly urge Congress to hold hearings as soon as possible. At hearings, Joint Committee on Taxation staff could lay out the workings and history of current provisions governing the taxation of Americans abroad. It could set forth the relevant revenue implications – what is the revenue “pickup” now and what would be the results under certain changes, including a change from citizenship-based taxation to residency-based taxation. It could also outline what it perceives to be the existing problems and possible alternative approaches. Treasury Department could state what it believes to be the policy considerations. And individuals and companies could testify as to their concerns and recommendations. An important part of this is not only the situation of American citizens living abroad but businesses, including large and small businesses, in the US working to expand exports and create jobs for Americans wherever those Americans hang their hat at the end of the day.

The comments provided herein will primarily concern the discussion of issues in the 2025 Green Book, the Tax Cuts and Jobs Act (TCJA) and OECD international tax agreement during the hearing of April 30, 2024.

CHILD TAX CREDIT EQUITY FOR AMERICANS PARENTS ABROAD

In comments related to the Biden Administration’s pursuit of equity, Rep Terri Sewell said this about proposals to support working class Americans in the 2025 Green Book:

The budget is truly a reflection of what we value. We spend money on those things that we value. I want to commend this administration and yourself for including in this budget expanding the Earned Income Tax Credit, the Child Tax Credit (CTC) and the Low Income Housing Tax Credit.

American parents living and working abroad applaud proposals to renew the expanded tax credits in the TCJA, American Rescue Plan and Inflation Reduction act. However, they might be feeling relatively less valued by the government, as they have been routinely left out of the CTC full refundability and the advance payments. From a tax administration standpoint, with the introduction of online IRS accounts and the availability of secure platforms for making international cash transfers, it is difficult to understand why there is a residency requirement for CTC full refundability and advance payments.

We hope that in TCJA renegotiations both the Congress and the Biden administration support the full inclusion of Americans families abroad in the expansion of the CTC and we ask that Congress remove the U.S. residency requirement from any CTC eligibility provisions. Congressional revenue estimators should detail the revenue implications, which we believe would be minor.

TCJA REDRESS FOR AMERICANS ABROAD WITH SMALL BUSINESSES

A great many U.S. citizens moving abroad with highly sought-after skills, training and experience start businesses abroad because they lack sufficient foreign language skills or local contacts to attract employment. ACA has raised on many occasions the very serious problems the TCJA GILTI tax has caused for Americans abroad who are raising families and planning for their retirement on the proceeds of small to medium size businesses registered in the countries where they live. These comments by Rep. Vern Buchanan about business owners in his home state have acute resonance for U.S. citizen owners of small to medium size businesses abroad.

"I look across Florida and a lot of small to medium size businesses make \$600,000 per year but they don't take home \$600,000. They take home \$100, \$150, \$200,000. They leave capital in [the business] to grow and build their businesses. That's the reality"

That is certainly the reality for small businesses abroad who may lack access to local debt or equity markets. They may be leaving capital in their business to grow and expand, or as a DIY pension fund.

GILTI Tax was designed to tax the unrepatriated profits of the overseas subsidiaries of large U.S. multinational corporations and not the profits in the small businesses of Americans abroad. They were never the GILTI tax target, and they are years overdue for relief.

Congress has an opportunity to redress the harm GILTI has inflicted on U.S. citizens abroad who own small to medium size businesses in the renegotiation of the TCJA. We hope there is a fix for them in the tax bill negotiated this year.

OBJECTIONS TO OECD PILLAR ONE AND WORLDWIDE TAXATION

Reps Doggett, Kelly, Westrup, Ferguson, Estes, Hearn, Steel, Miller and Feenstra challenged Sec Yellen on the impact of Pillar One of the 2-pillar OECD/G20 international corporate tax agreement on U.S. tax revenues.

Until the TJCA was passed into law, U.S. corporate tax laws imposed U.S. tax on the profits of U.S. MNEs generated anywhere in the world ("worldwide taxation"), whereas other countries tax the domestic profits of their MNEs ("territorial taxation").

When Pillar One is implemented the OECD countries will tax some foreign profits of their largest MNEs, thus ushering in a global system of "worldwide taxation".

Pillar One will effectively require many non-U.S. MNEs operating in the U.S. to pay at least some tax to their home country on profits generated in their U.S. operations.

Several members decried it as executive branch overreach and said it would "help other countries and hurt the U.S. economy". They characterized Pillar One as:

- *"giving away the U.S. tax base"* (Rep Westrup)
- *"turning [U.S. tax] revenue over to other countries"* (Rep Ferguson)
- *"a raid on the U.S. tax base"* (Rep Estes)
- *"creating a new [corporate] tax subsidy system"* (Rep Hearn)
- *"Surrendering the U.S. tax base to unelected bureaucrats on the OECD"* (Rep Miller) and
- *"using the U.S. as a piggy bank"* (Rep Feenstra)

Americans abroad will marvel at this strident defense of "territorial taxation for corporations" whilst lawmakers rebuff our proposals for the U.S. to implement a system of "territorial taxation for individuals," also known as residence-based taxation.

Non-resident U.S. citizens suffer considerable tax policy-based discrimination, such as: some double-taxation; being taxed (Net Investment Income Tax) for programs they cannot access (Affordable Care Act); being excluded from full refundability of the child tax credit when they are otherwise eligible; barriers to U.S. investment vehicles which require U.S. residential addresses, as well as punitive treatment of investment vehicles available in our countries of residence; and much more.

RESIDENCE-BASED TAXATION

ACA has long advocated that the real solution to the problems of overseas taxpayers is the adoption of residence-based taxation (RBT) which would tax U.S. citizens overseas on the basis of where income is earned, therefore excluding foreign earned income from U.S. taxation and only taxing U.S. sourced income. ACA was the first organization to develop a [side-by-side analysis](#) that indicates where in the current tax code changes could be made in a move to a system of taxation based on residence. ACA has fielded [two research projects](#) on the subject with District Economics Group (DEG), Washington, DC-based economic consulting firm – one in 2017 and one in 2022 - that provide valuable information on the income, asset and taxation of U.S. citizens living and working overseas. This data, one of a kind, supports our position that RBT can be adopted and be revenue neutral and tight against abuse.

ACA's research studies provide invaluable data on the community of U.S. citizens living and working abroad and most importantly, gives Congress an accurate number for the size of the community of U.S. citizens living and working outside the U.S. ACA estimates this figure at approximately 4-5 million (excluding US military). Unfortunately, many in Congress continue to reference the U.S. State Department figure of 9 million. In recent meetings with the U.S. State Department ACA has learnt the DOS will no longer be publishing this figure, citing the difficulty in accessing robust data to make these estimates. This acknowledges the inaccuracy in the 9 million estimate, a figure which has, firstly, distorted many of the government estimates for changes in tax policy that affect U.S. citizens living and working outside the U.S. and, further, has only cemented the false optic that U.S. citizens overseas are tax evaders.

CONGRESSIONAL HEARINGS ON TAXATION AND U.S. CITIZENS ABROAD

ACA believes it is essential that Congress hold hearings on the issues affecting this very important group of U.S. citizens. ACA has presented our research and data to the Ways and Means Committee staff as well as the other Tax Writing Committees on Capitol Hill. But the time has come for our data and knowledge, and that of other organizations and individuals, be put on official record with Congress. There is Congressional interest in tax reform for U.S. citizens abroad, evidenced by the introduction of several pieces of legislation.

- [H.R.2729 - 118th Congress \(2023-2024\): Commission on Americans Living Abroad Act of 2023 | Congress.gov | Library of Congress](#) (The Commission on Americans Living Abroad Act) which would call for the creation of a commission to begin investigating the concerns of this community. This Commission would be an excellent start to the process of holding hearings.
- [H.R.5432 - 118th Congress \(2023-2024\): Tax Simplification for Americans Abroad Act | Congress.gov | Library of Congress](#) The Tax Simplification for Americans

Abroad Act calls on the Congress to mandate the IRS to create a simplified filing form (worksheet) for certain US citizens filing from overseas.

- [H.R.5799 - 117th Congress \(2021-2022\): Overseas Americans Financial Access Act | Congress.gov | Library of Congress](#) The Overseas Americans Financial Access Act would call for the use of a Same Country Exemption (safe harbour) for reporting of financial account held overseas.

Congress owes it to the community of U.S. citizens overseas, as well as to the Congressional offices that support legislative and regulatory change, to make hearings a priority. It is imperative that the issues of U.S. citizens living overseas are put on record with the Committees and Congress before the expiring and other provisions of the TCJA are settled. ACA can assist with the organization of witnesses to provide data, testimony and case studies. Please contact us at any time to discuss.

ACA would like to thank the House Ways & Means Committee for the opportunity to provide comment on Secretary Yellen's testimony before the Committee.

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Introduction

The undersigned organizations representing the U.S. innovation ecosystem appreciate the opportunity to submit comments regarding the President's Fiscal Year 2025 Budget Request, Treasury Green Book, and the impact of certain tax provisions on the innovation economy, in response to the April 30, 2024, hearing held by the U.S. House Committee on Ways and Means.

The U.S. economy is the largest, most innovative, and dynamic in the world because of the American entrepreneurial spirit and its power to drive economic growth, innovation, and opportunity. Tax policy affects nearly every aspect of the innovation ecosystem. As Congress prepares to engage on tax reform, we encourage you to bolster and expand tax incentives that promote equity ownership and drive investment to the startup and small business ecosystem. Critical to this will be driving a tax regime that maintains competitive tax rates for corporations, individuals, and pass-through entities, attracting capital to the U.S. and incentivizing investment. Beyond this, however, there are key pillars that would contribute to fostering growth: preserve and expand the innovation ecosystem; expand the value of ownership; and modernize the Internal Revenue Service (IRS).

Preserve and expand innovation ecosystem

Start-ups and small businesses are a vital part of the American economy but they depend significantly on investment capital to innovate, build a new workforce, and achieve meaningful growth. Founding, investing in, and working for a startup can be riskier by nature. In the earlier stages of a business, tax policy can be particularly impactful to affect critical decisions that would create more opportunities for companies to grow, attract resources, and boost productivity. The tax code should make it easier for small businesses to access the financing they need to succeed in today's economy.

- *Expand QSBS treatment.*
Congress enacted the qualified small business stock (QSBS) exclusion¹ (section 1202 of the Internal Revenue Code) to spur job creation and incentivize long-term investment in startups and small businesses, which are inherently risky. This important bipartisan provision exempts most startup investors, employees, and founders from paying capital gains taxes when selling their equity if they have met certain conditions, including a five-year holding commitment. The QSBS incentive attracts essential capital formation from early-stage investors across the country that is vital to help entrepreneurs pursue innovative ideas and companies that will fuel continued economic growth.

The QSBS exclusion is vital to the innovation economy and American competitiveness. We urge Congress to expand eligibility to more businesses, making it easier and cheaper for entrepreneurs to raise capital and provide more flexibility in financing options.

¹ [QSBS coalition letter from the innovation ecosystem](#), submitted April 20, 2023.

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- *Preserve capital gains rate and carried interest tax treatment.*
 Long-term capital gains offer favorable tax treatment to investors that provide an extended period (greater than one year) of investment in an asset. This capital spurs job creation, new businesses, economic growth—all of which are favorable policy outcomes. We encourage Congress to maintain this lever to incentivize asset investments with longer holding periods.

Carried interest helps align the interests of investment fund managers with investors by allowing the fund manager to share in the fund's profits. Fund managers are generally compensated in two ways: management fees and carried interest. While management fees are charged as a percentage of assets under management (AUM) (generally 2%), carried interest is the percentage of a private fund's investment profits a fund manager receives as compensation (generally 20%). Because these profits are a return on investment, they are taxed at a capital gains rate like other investments. Much like equity in a startup or other companies, carried interest is used to incentivize fund managers. This incentive is particularly critical for emerging fund managers, who have less assets under management and rely on carry to continue to grow and invest in emerging founders. Efforts to eliminate or limit carried interest tax treatment would disproportionately impact those emerging fund managers who back early-stage businesses and provide them with long-term investment horizons.

- *Promote corporate investment in innovation.*
 Restoring 100% immediate expensing for research and development (R&D) costs and making bonus depreciation permanent will boost investments in innovation and give an edge to U.S. competitiveness. The ability to deduct R&D expenses has incentivized critical investments in the advancement of research and technology, which has led to countless scientific breakthroughs and accelerated decades of economic growth. The TCJA repealed the option to expense R&D under section 174 of the Internal Revenue Code (IRC) in 2022 and required businesses to capitalize those costs—including software development costs—and amortize them over a period of five years for domestic research or 15 years for foreign research.

As a result, businesses that may have broken even or lost money are now facing significant tax bills because of the substantial and unexpected increase to their taxable income. The nation's startups are hit disproportionately by this change, as they tend to invest heavily in developing, testing, and improving their new product or service. A significant and unexpected tax burden can be devastating for innovative but fragile new companies with small reserves to sustain a tax hike in the crucial early years. We encourage² Congress to restore full R&D expensing under section 174 and make section 168(k) 100% bonus depreciation permanent, incentivizing businesses to invest in new technology, computer software, and machinery that allow them to grow, hire, and expand.

² [R&D coalition letter from the innovation ecosystem](#), submitted January 11, 2024.

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Expand value of ownership

Equity ownership drives performance, innovation, and economic opportunity. Our tax code should incentivize it and enable more employee owners to realize and optimize the full value of ownership. Employee equity helps companies attract and retain the best talent, creating a more engaged workforce that improves company performance. It also aligns interests around the long-term, innovative efforts that the most ambitious startups and small businesses undertake. Employee ownership enables the people helping build the company to participate in its profit. This can lead to uncapped upside that creates a sustainable asset for wealth creation. And when wages have not kept pace for all but the highest earners, this can help erode income inequality. Equity ownership is critical to employees, U.S. companies, and our communities. The tax code can help bolster it and make that ownership meaningful.

- *Align taxation to time of sale.*

Taxation on equity ownership should be aligned to the year that shares are sold. Tax on equity compensation is largely applied to paper gains, not actual gains. Stock options are taxed the year the employee purchases the option; equity grants are taxed when they vest. This means the employee-owner often pays taxes before they sell any shares. Further, despite paying taxes on that share value, there is no guarantee the value will not fall in the future or that the employee will ever realize such gain. The critical roadblock to employee ownership has increasingly become a concern around the affordability of exercising these options. Whether it is making it more affordable for employees to purchase stock options, pay taxes upon equity grant, or exercise Incentive Stock Options (ISOs) within the limited 90-day (or three-month) post-termination exercise period when an employee departs a company—improvements can be made to the tax code to better support equity holders by aligning the tax liability to the year equity shares are sold.

We encourage Congress to shift the equity ownership tax burden to the year of sale to help employees realize the full value of their hard-earned equity, and we also urge Congress to extend the duration in which former employees can exercise their options following their departure from a company.

- *Make 83(b) elections electronic.*

Section 83(b) elections enable founders, employees, and other service providers who are granted compensatory equity (or other property), subject to vesting, to be taxed on the value of such equity on the grant date on which the equity is acquired rather than a later date when the equity vests or becomes transferable. Making a timely election can have a substantial impact on tax liability and planning for new business owners and employee-owners. Although the IRS has made improvements³ enabling electronic signature, this highly manual process continues to create hurdles for timely filing within the short 30-day window and uncertainty around the filing status. We encourage Congress to require the IRS to provide e-filing of section 83(b) elections to ease the burden of taxpayer

³ IRS comment letter: “[Request to Make Electronic Signatures Permanent and Allow E-Filing for Section 83\(b\) Elections](#),” submitted February 10, 2023.

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compliance because the current paper filing process is inefficient, labor intensive, and costly.

Modernize the IRS

While the tax system has increased in complexity, and technology has become more integrated into taxpayers' lives and business operations, the IRS infrastructure has not kept pace. This has adversely impacted taxpayers, created delays, led to uncertainty, and shaped how taxpayers engage the IRS. We encourage Congress to continue to push the IRS to execute on its modernization plan. Doing so will modernize the IRS's systems and technology to improve customer experience, streamline and lower the administrative burdens on startups, small businesses, and employees, and provide greater clarity to all taxpayers.

The tax code can hinder growth or unlock it by driving investment to the innovation ecosystem, and empowering those builders to further invest in their people, products, and the future. These principles and examples will be critical to driving American competitiveness and innovation. The list we have provided is not comprehensive, but it offers fundamental principles to inform your early deliberations on the future of U.S. tax policy.

We applaud your leadership and look forward to working together towards our common goal of creating innovation and economic growth for more Americans.

Sincerely,

Angel Capital Association (ACA)
Carta
Center for American Entrepreneurship (CAE)
Engine
Financial Technology Association (FTA)
Institute for Portfolio Alternatives (IPA)
National Venture Capital Association (NVCA)
Small Business Investor Alliance (SBIA)
Technology Councils of North America (TECNA)

