

**Questions for the Record from Chairman Lindsey Graham  
To Adam Szubin  
U.S. Senate Committee on the Judiciary  
“Combating Kleptocracy: Beneficial Ownership, Money Laundering, and Other Reforms”  
Submitted on June 26, 2019**

**1. Would beneficial ownership transparency help financial institutions in their overall AML compliance programs?**

**a. How would it assist in banks being able to comply with “know your customer” and customer due diligence requirements?**

Proposals for beneficial ownership legislation have taken various forms, but prospective legislation would almost certainly provide significant assistance to financial institutions in satisfying their AML/CFT responsibilities. At minimum, US incorporated entities would be required to provide accurate beneficial ownership information at the time of incorporation on penalty of fines or criminal punishment. When financial institutions subsequently request that information, then, there is a greater likelihood that US corporate representatives will provide accurate information. Under current proposals, financial institutions would be able to verify if the information that they receive from a customer matches the information provided to the US government. This would allow banks a quick, easy, and cost-effective way to check beneficial ownership information when opening new accounts or reviewing existing accounts, or when facilitating financial transactions. Other countries have established a public registry of beneficial ownership information, which would likewise allow financial institutions to verify the information provided.

**2. Can you briefly explain how the lack of true beneficial ownership information in corporate structures complicates law enforcement investigations?**

The lifeblood of all criminal activity is money. Whether it is narco-traffickers attempting to launder proceeds or terrorists funding their activities, nefarious actors need to move money while minimizing the chances they are discovered by law enforcement. By transferring funds behind the veil of anonymous shell companies, criminals are able to disguise the source and purpose of those transfers from law enforcement. This is a particularly acute problem when foreign criminals use the good name of the United States—as expressed through the formation of an American company—to open accounts at foreign financial institutions without the scrutiny accorded to companies from other jurisdictions.

**3. Based on your previous work at the Treasury Department, can you describe your experiences dealing with international partners on the issue of fighting kleptocracies and money laundering issues; and whether the United States’ lack of beneficial ownership rules proved an impediment to those discussions?**

The deficiencies in the US beneficial ownership regime presented numerous obstacles in dealing with international partners on combating kleptocracy and money laundering. First, at a systemic level, the US frequently presses international bodies and individual jurisdictions countries to augment their anti-money laundering (AML) and combating the financing of terrorism (CFT)

standards and laws, or the implementation of those laws. The beneficial ownership hole in our own AML/CFT regime undermines those efforts as the USG is seen as not having as its own house in order and it can provide a ready excuse for jurisdictions that seek to avoid costly or difficult steps. Second, in cooperating with other jurisdictions on AML investigations, we would frequently encounter anonymous US companies blocking our joint investigations, which was both frustrating and embarrassing.

**4. Critics of beneficial ownership disclosure have raised concerns that those forming companies would just lie on documents requiring that information. Is that criticism well founded?**

The same criticism could be leveled at nearly all information gathering requirements, such as those currently undertaken for customer due diligence. In reality, law enforcement derives tremendous value from these requirements. First, companies may be incorporated before the intent is hatched to use them for criminal purposes. Second, many criminals believe they are not on the government's radar screen and do not need to hide their true identities. Third, even if a criminal does lie, the falsely identified beneficial owner/s of the company may provide an investigative link that is useful to law enforcement. Finally, an intentional misstatement on a required filing will expose the criminal to civil or criminal penalties, giving prosecutors an extra tool, as in the context of criminal organizations being prosecuted for tax fraud.

**5. In the month that followed September 11th, 2001, the U.S. Treasury began fighting al-Qaeda on the financial front, freezing assets and taking down its funding networks.**

**a. What would it look like for Treasury and its international counterparts to similarly crack down on kleptocracies and their asymmetric tools?**

Kleptocracy and government corruption pose a serious threat to the rule of law and stability in many countries around the world. Unfortunately, the scale of the threat—both geographically and in terms of the number of bad actors—is vastly larger than the al Qaida movement at the time of September 11<sup>th</sup>. Also, the UN Security Council and nearly every country in the world was united in the need to combat al Qaida. Kleptocracy is denounced in the abstract, but senior government officials in kleptocratic governments benefit from the corruption and strongly resist efforts to expose and disrupt it. We do need to take a harder stance against kleptocracies, but we should be realistic about the scale, cost, and duration of the effort.

**b. What new authorities, resources, and guidance are needed?**

Treasury has significant authorities at its disposal to combat kleptocracy, most notably the Global Magnitsky Act. I would defer to current Treasury officials as to whether additional authorities would be useful. I suspect that this effort could be strengthened if Congress were to appropriate more resources to the relevant offices in the departments of Treasury, Justice, and State, as well as the intelligence community.

**6. How do Chinese companies use anonymous shell companies to hide the influence of the Chinese government and to evade sanctions on rogue regimes like North Korea and Iran?**

Shell companies are used by illicit actors around the world to hide their true identity and to evade sanctions. One notable example of Chinese exploitation of shell companies was the Karl Lee (Li Fangwei) proliferation network. Fangwei used a web of shell companies to supply companies involved in Iran's ballistic missile program. As described by the Chief of the FBI's Financial Crimes Section, Steven D'Antuono, during his May 21, 2019 testimony, Fangwei's operations in some cases involved U.S. businesses who were unaware of his involvement as beneficial owner of Chinese shell companies.

## **7. What is the role of public diplomacy in combating kleptocracy?**

Focusing attention on corrupt actors through public diplomacy efforts helps reinforce global governance and compliance norms. By exposing how kleptocrats siphon off resources that could otherwise be used to alleviate poverty, build infrastructure, or expand services, we can encourage populations to demand greater accountability from their governments. Multilateral bodies as well as non-governmental organizations that focus on these issues serve as a key driver. It is important that the US Government provide robust support to multilateral bodies that focus on kleptocracy and corruption.

### **Would an annual kleptocracy report issued by the State or Treasury Department be helpful?**

An annual kleptocracy report could assist in efforts to raise the profile of this issue and to shine a spotlight on particularly corrupt leaders who steal from their people. If such a report were issued, its findings would need to be backed by publicly available information. Moreover it should include a clearly described and objective methodology; the benefits of a report would be lost if it appears that the report is driven by political factors or is turning a blind eye to the problems among the partners and allies of the United States.

## **8. How can multilateral structures be equipped for the fight against kleptocracy? Should an International Anti-Corruption Court be established either similarly to or as a subsidiary of the International Criminal Court?**

There are a number of multilateral bodies that work to combat global corruption. The United Nations Convention Against Corruption and the OECD Anti-Bribery Convention both provide a structure for global anti-corruption efforts.

**Hearing on  
“Combating Kleptocracy: Beneficial Ownership, Money Laundering, and Other  
Reforms”**

**Questions for the Record for Mr. Adam J. Szubin  
Submitted June 26, 2019**

**QUESTIONS FROM SENATOR FEINSTEIN**

- 1. What is the number one thing we can do to stop corrupt foreign actors from laundering money through the United States?**

The most important thing that Congress can do to stop the flow of dirty money through the United States is enact legislation mandating the disclosure of beneficial ownership information.

- 2. Under current law, is there any way to know for certain whether foreign actors are funneling money into US elections? What is needed to stop those illegal foreign contributions?**

While I am not an expert on election financing, I believe that requiring companies to disclose their beneficial owners will provide much needed transparency to investigations of all kinds of illegal transactions, including illegal election contributions.

- 3. How do we best ensure that US politicians are not subject to undue influence from foreign funding of their business interests?**

I’m sorry, but I am not knowledgeable enough about election financing to provide an informed opinion.

- 4. The United Kingdom recently enacted “perhaps the most robust beneficial ownership legislation to date.” [Senate Committee on Banking, Housing, and Urban Affairs, Statement of Steven M. D’Antuono (Acting Deputy Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation), May 21, 2019]. As a result, the UK now has public registries of beneficial owners of trusts, real estate, and companies. The legislation was enacted in response to findings by the National Crime Agency and the Parliament that “corrupt Russian funds laundered through the UK including via property, posed a threat to national security.” [The Guardian, *Offshore owners of British property to be forced to reveal names*, July 23, 2018]. Similarly, the European Union is in the process of implementing its Fifth Anti-Money Laundering directive.**

- a. Do you support the UK’s anti-money laundering legislation?**

- b. Do you support the anti-money laundering directives issued by the European Union?**
- c. If we considered similar legislation, what, if any, modifications would you suggest?**

While I fully support the objectives of the UK and EU beneficial ownership approaches, I believe that it is possible to address the problem of anonymous shell companies without a public registry. Beneficial ownership legislation will work if it requires that information be provided to a government database, so long as access is granted to law enforcement officials with a legitimate investigatory purpose, or to other entities such as banks with the permission of the company whose information is being requested.

- 5. Would you support a task force within the U.S. Treasury Department that is focused solely on tracing and prosecuting the unlawful flow of Russian money into US elections or businesses?**

Illegal election interference is a serious and urgent subject for federal investigators. I would defer to the Justice Department and Treasury Department as to where and how that effort would be best housed.

- 6. What additional tools would Treasury need to be effective in stopping money laundering through US businesses?**

I would refer this question to senior officials in Treasury's Office of Terrorism and Financial Intelligence, who would have the best sense of current needs and any possible gaps.

- 7. The PATRIOT Act amended the Bank Secrecy Act to require certain industries in the United States to implement anti-money laundering systems, including the real estate industry. In the past few years, the Treasury Department has issued Geographic Targeting Orders, which require U.S. title insurance companies to obtain the beneficial owners of certain high-value, cash real estate transactions, in certain major cities.**

- a. What is the national security risk of foreign investment in real estate that is owned, or that benefits, US lawmakers?**

A tenet of anti-money laundering policy is that one should not be able to do something indirectly and/or covertly if it would be prohibited if done overtly. To the extent that US lawmakers are required to disclose or are prohibited from accepting certain investments or benefits from foreign persons, those transactions should not be masked behind non-transparent real estate investments.

- b. Would the fact that a buyer substantially overpaid for a real estate property**

**be reported as**

**Questions for the Record from Senator Charles E. Grassley  
U.S. Senate Committee on the Judiciary  
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Submitted on June 26, 2019**

**Mr. Adam Szubin**

1. **A concern on beneficial ownership laws is that they could unduly burden small businesses, in that compliance costs, difficulty understanding regulatory requirements, and extra paperwork arguably create too many regulatory burdens. You stated at the hearing that completing a beneficial ownership form for small businesses would be a negligible burden.**
  - a. **How much would beneficial ownership laws affect the average small business?**

I do not believe that enacting beneficial ownership disclosure requirements would significantly impact the average small business. As I stated in my testimony, the U.S. Census Bureau’s 2016 Annual Survey of Entrepreneurs revealed that 94% of firms with paid employees have fewer than 5 owners. Small businesses without complex ownership structures will not have a difficult time disclosing information about their beneficial owners to FinCEN. The necessary information could likely be included in a page or two. Moreover, this information is unlikely to change year to year for most small firms, meaning there should not be ongoing costs.

- b. **What benefits would small businesses reap because of beneficial ownership laws?**

Small business owners, like all Americans, suffer when criminals circumvent the law. As an example, by exploiting shell companies, tax evaders are able to create an uneven playing field, putting law-abiding, tax-paying small business owners at a distinct disadvantage. In another example, drug traffickers and professional money launderers are able to hide behind seemingly legitimate businesses that are in fact propped up by dirty money—legitimate businesses are then forced to compete against front companies that do not need to turn a profit, as their primary purpose is to launder the proceeds of criminal activity. Small business owners can also be priced out of certain areas where criminals use high-value real estate to park dirty money, which artificially drives up lease prices. Finally, small business owners who have worked hard to save and then invest their earnings are susceptible to fraudsters who use shell companies to hide Ponzi schemes and other forms of financial fraud.

- c. **How can beneficial ownership legislation address the concerns of small businesses, particularly in ensuring that the owners understand the necessity of filing beneficial ownership information, and how to identify the beneficial owner?**

In administering a beneficial ownership disclosure requirement, it will be incumbent on implementing authorities to issue clear regulations and guidance that define the key terms as

simply as possible and that articulate the importance of transparency in this arena to defend our country against thieves, money launderers, and sanctions evaders.

2. **You stated in your written testimony that some argue that providing beneficial ownership information could “unnecessarily infringe on Americans’ privacy rights.”**
  - a. **How can beneficial ownership legislation ensure that privacy rights are preserved, while allowing law enforcement to investigate bad actors?**

Beneficial ownership legislation can protect the privacy rights of Americans by outlining clear standards under which law enforcement can access beneficial ownership information, as is the case with other confidential filings pursuant to the Bank Secrecy Act.

3. **Are our current laws on money laundering and corporate transparency effective in destabilizing transnational criminal organizations? If not, please explain why we must update our laws on investigating and prosecuting money laundering, and increasing corporate transparency.**

While we have made tremendous strides since 9/11 in improving our anti-money laundering regulatory architecture, the lack of beneficial ownership disclosure requirements represents a gaping hole in our defenses. It hampers our law enforcement professionals who rely on following the money as one of their primary investigative tools. What’s more, our failure to address this issue can affect our efforts to convince other governments to adopt their own AML/CFT reforms. Strengthening the AML/CFT regimes of other governments will be critical if we are to make headway in combating transnational criminal organizations, which often operate and hold their funds abroad.

4. **At a Senate Judiciary Committee hearing I held on money laundering in 2017, a witness testified that “trade based money laundering is the largest money laundering methodology in the world. It’s also the least known, least understood, and least enforced.”**
  - a. **Do you agree with that assessment of trade-based money laundering? If so, why is it particularly difficult to identify and enforce?**

I have no reason to doubt the expert consensus that TBML is among the most prevalent money laundering methods used today. If one analogizes the hunt for dirty money to looking for needles in a haystack, part of the difficulty in investigating TBML is the vast size of the haystack. According to the World Bank, the value of global exports has risen from \$314 billion in 1970 to \$19.04 trillion in 2018.<sup>1</sup> As global trade exploded over the past 50 years, so have opportunities to abuse cross-border flows of money and goods for criminal purposes.

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<sup>1</sup> World Bank, Trade: Merchandise exports (current US\$), “<https://data.worldbank.org/topic/trade>.”

- b. What steps can be taken to better identify and seize the proceeds of trade-based money laundering crimes?

One of the most promising approaches to identifying TBML is the use of Trade Transparency Units (TTUs), which enable governments to compare bilateral trade data and identify discrepancies. It is in the US government's interest to help key foreign governments establish their own TTUs, to allow our law enforcement officials to more readily track and disrupt TBML schemes.

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**Questions for the Record Submitted June 26, 2019**

**QUESTIONS FROM SENATOR BOOKER**

**1. In your testimony, you discussed the implications of beneficial ownership information collection being a state-led effort, as opposed to implementing a federal registry. Specifically, you said that a state-led registry effort would “perpetuate the race-to-the-bottom system” and create “gaps” that “allow criminals to slip through the cracks.” Any legislative solution would only be as effective as its ability to successfully gather beneficial ownership information that is verifiable.**

**a. Could you elaborate on the “race-to-the-bottom system” in this field and provide any critical examples of “gaps” that currently exist?**

I believe that if the decision as to whether to collect beneficial ownership information is left to the states, it will simply perpetuate the status quo whereby states do not collect adequate, if any, beneficial ownership information in an effort to maximize fees associated with company formation. Currently, no state currently requires beneficial ownership information be provided at the company formation stage and 23 do not even require provision of the company’s address. Frequently, the only information required at the company formation stage is that of the formation agent, often a lawyer or representative who holds no actual interest in the company being formed.

**b. What specific kinds of information should be collected as part of any beneficial ownership registry to best ensure the efficacy of such a registry?**

In general, companies should submit upon formation the names, date of birth, addresses, and proof of identification (passport, drivers’ license etc.) of all beneficial owners above a specified threshold.

**c. What other “gaps” or issues might arise that would allow international illicit actors to circumvent or undermine a beneficial ownership information registry?**

Illicit actors may provide false or misleading information about beneficial ownership, although this is an inherent risk whenever the government requires the provision of information, and the benefits of requiring the information are still considerable. Separately, it is possible that international illicit actors would purposefully maintain interests below the percentage threshold at which disclosure is required.

**d. If you identified any other issues, how would a legislative proposal best address those issues?**

The best way to address these issues would be to provide a clear grant of authority to Treasury that would allow it the flexibility to craft regulations to address the complexities of the current situation and to adapt those regulations as circumstances require.

**2. In your testimony, you responded to concerns regarding imposing additional burdens on small businesses. You stated that most firms with paid employees have fewer than five owners and that such a requirement would likely take less than an hour for many business owners. Others, however, have noted that any requirement that does not specifically define who should be listed in the registry might force business owners to seek outside counsel. We should seek solutions that root out dark money and shed light on shell companies used by international illicit actors, but we also want to be mindful of limiting the burdens placed on legitimate American small businesses.**

**a. How would you respond to the assertion that a beneficial owner requirement might oblige small businesses to seek outside counsel?**

I believe that legislation and implementing regulations can be crafted to clearly establish the definition of a beneficial owner for purposes of the disclosure requirement. The primary characteristic will be the ownership percentage, which is a straightforward criterion to apply. Moreover, many small businesses already turn to outside counsel in order to assist in the company formation process and adding beneficial ownership disclosure would not significantly increase costs.

**b. Do you believe that proposed legislation like the True Incorporation Transparency for Law Enforcement (TITLE) Act<sup>1</sup> sufficiently addresses any such concerns by providing an adequate definition of “beneficial owner”?**

FinCEN should be given the regulatory mandate to craft a clear and workable definition for the term “beneficial owner.”

**c. Do you foresee any other significant burdens that would be placed on small business owners from a beneficial owner disclosure requirement?**

I do not.

**d. If so, does the proposed TITLE Act address these potential burdens?**

**3. In your testimony, you stated that Congress could avoid certain privacy issues by implementing a private registry. Witnesses who previously testified before this Committee have indicated that, under the proposed TITLE Act, states could still retain the discretion to release beneficial ownership information.<sup>2</sup> Many Americans are concerned about the amount of data available to public and private actors and the security of that information. A beneficial ownership disclosure requirement should account for Americans’ legitimate privacy concerns.**

- a. Should federal legislation prohibit states from disclosing beneficial ownership information through public agencies or “sunshine laws”?**
- b. Do you believe that states could make public the beneficial owner information collected under the proposed TITLE Act? If so, please identify how states could be precluded from making that information public.**

I am not an expert in this state disclosure laws, and would defer to experts on these questions.

- c. What other privacy issues do you believe might emerge from collecting beneficial ownership information?**

I do not anticipate any other privacy issues emerging from the collection of beneficial ownership information. Under FinCEN’s Customer Due Diligence Rule (“CDD”), financial institutions are already required to gather beneficial ownership information from those opening accounts; recent legislative proposals would simply provide a more comprehensive and verifiable method of obtaining this information.

- d. What measures should be included in any legislative proposal to ensure that adequate privacy protections exist?**

I believe that it is important that any access to beneficial ownership information should require a valid law enforcement purpose or the permission of the company disclosing information.

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<sup>1</sup> S. 1889, 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/senate-bill/1889>.

<sup>2</sup> See, e.g., *Beneficial Ownership: Fighting Illicit International Financial Networks Through Transparency: Hearing Before the S. Comm. on the Judiciary*, 115th Cong. (Feb. 6, 2018); see also *Outside Perspectives on the Collection of Beneficial Ownership Information: Hearing Before the S. Comm. on Banking, Hous. & Urban Affairs*, 116th Cong. (June 20, 2019).