Anti-Money Laundering Issue Summary

Under the current anti-money laundering/countering the financing of terrorism (AML/CFT) statutory and regulatory framework, the nation's banks are effectively deputized to prevent, identify, and report suspicious activity, including terrorist financing, money laundering, and tax evasion. The purpose of the Bank Secrecy Act (BSA), which was enacted in 1970, is to require banks to submit certain reports or records that have a "high degree of usefulness" to law enforcement or national security officials. Financial institutions devote thousands of employees and billions of dollars to AML/CFT compliance. They are committed to this work and to assisting law enforcement officials in their efforts. Yet, data shows that banks' compliance efforts are not yielding real results, falling well short of the goal of providing "usefulness" to law enforcement.

BPI's Position

The AML/CFT regime should be modernized to be more effective in addressing current risks. The current AML/CFT framework is outdated and ill-suited to apprehending criminals and countering illicit financial activity. The 45-year-old BSA regime has been expanded, but not substantially revised, since its inception. An efficient redeployment of resources has the potential to significantly increase the national security of the country and efficacy of its law enforcement and intelligence communities.

Recommendations: The current AML/CFT framework needs fundamental reform to make this system an effective law enforcement and national security tool. 1. The Treasury Department through the Financial Crimes Enforcement Network (FinCEN) should take a prominent lead coordinating AML/CFT policy across the government. 2. Treasury should examine the current system to help institutions and law enforcement prioritize the most urgent AML/CFT risks, remove barriers to information sharing, and establish an inclusive process to provide feedback. 3. The Suspicious Activity Reporting (SAR) regime should be updated and streamlined to provide more useful information to law enforcement. 4. Congress should enact legislation to require the reporting of beneficial owner information at the time of incorporation to prevent the abuse of shell companies to obscure illicit financial activity. 5. Finally, Treasury should strongly encourage innovation and the use of artificial intelligence in institutions' AML/BSA and sanctions compliance programs.

Increase Effectiveness to Law Enforcement

Through a BPI empirical study, data shows that there are very few instances where banks' compliance efforts yield useful results for law enforcement. Banks reported that in 2017, they reviewed approximately 16 million alerts, filed over 640,000 SARs and more than 5.2 million Currency Transaction Reports (CTRs), and institutions that record data regarding law enforcement inquiries reported that a median of 4% of SARs and an average of 0.44% of CTRs warranted follow-up inquiries from law enforcement. While financial institutions file millions of reports, they receive feedback and follow-up on very few. The current system promotes the filing of SARs and CTRs that may never even be read, much less followed up on as part of an investigation. Policymakers should facilitate the flow of raw data from financial institutions to law enforcement, and any subsequent follow-up from law enforcement, to assist with modernizing the current AML/CFT framework. A more updated AML system with clearer mandates, utilization of innovation and streamlining would increase its effectiveness for law enforcement and national security efforts.

Beneficial Ownership Registry Needed

Presently, there is no requirement to record the true beneficial owner of legal entities when they file paperwork to incorporate, which makes it easy for money launderers and other illicit actors to obscure their identities from both law enforcement and their financial institutions. Federal regulations require financial institutions to know their customers (KYC) and conduct ongoing monitoring of all account information. A 2016 FinCEN customer due diligence rule mandates that financial institutions identify and verify beneficial ownership information for certain customers each time a new account is opened, or a triggering event occurs. A beneficial ownership database, established at FinCEN, would close the loophole in the current AML framework and provide accurate beneficial ownership information to law enforcement and financial institutions complying with KYC requirements.