

LESSONS FROM THE FINCEN FILES: A CALL TO REFORM THE REGULATION OF MONEY LAUNDERING

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INTRODUCTION

BuzzFeed News and the International Consortium of Investigative Journalists recently released thousands of leaked government documents known as the “FinCEN files.”¹ These files contain over 2,100 suspicious activity reports (“SARs”)² and other documents,³ which together illuminate trillions of dollars of potential global money laundering that the U.S. government failed to stop.⁴

Money laundering, or making unlawfully elicited money appear to be from a legitimate source,⁵ is widespread.⁶ The FinCEN files revealed only about 0.02% of the SARs that were probably filed between 2011 and 2017, but these records alone identify over \$2 trillion in potential global money laundering.⁷ These files demonstrate how SARs are catastrophically failing to stop global money laundering, a problem that the lack of transparency surrounding SARs only worsens.

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1. See Jason Leopold, Anthony Cormier, John Templon, Tom Warren, Jeremy Singer-Vine, Scott Pham, Richard Holmes, Azeen Ghorayshi, Michael Sallah, Tanya Kozyreva & Emma Loop, *The FinCEN Files*, BUZZFEED NEWS (Sept. 20, 2020, 1:01 PM), <https://www.buzzfeednews.com/article/jasonleopold/fincen-files-financial-scandal-criminal-networks>; *Global Banks Defy U.S. Crackdowns by Serving Oligarchs, Criminals and Terrorists*, INT’L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Sept. 20, 2020), <https://www.icij.org/investigations/fincen-files/global-banks-defy-u-s-crackdowns-by-serving-oligarchs-criminals-and-terrorists>.

2. See *Suspicious Activity Reports (SAR)*, OFF. OF THE COMPTROLLER OF THE CURRENCY [hereinafter COMPTROLLER OF THE CURRENCY], <https://www.occ.treas.gov/topics/supervision-and-examination/bank-operations/financial-crime/suspicious-activity-reports/index-suspicious-activity-reports.html> (last visited Nov. 15, 2020) (stating that financial institutions generally must file a suspicious activity report within 30 days of detecting a reportable transaction).

3. *BuzzFeed News* does not specify the nature of the documents, simply noting that, in addition to SARs, the FinCEN files contain “other US government documents.” Leopold et al., *supra* note 1.

4. *Id.*

5. Mitchell McBride, *Money Laundering*, 57 AM. CRIM. L. REV. 1045, 1045 (2020).

6. Ian Talley & Dylan Tokar, *Leaked Treasury Documents Prompt Fresh Calls for Updated Anti-Money-Laundering Regulations*, WALL ST. J. (Sept. 21, 2020, 6:16 PM), <https://www.wsj.com/articles/treasury-plugs-gap-in-anti-money-laundering-regulations-11600680611>.

7. Elisa Martinuzzi, *The World Is Losing the Money Laundering Fight*, BLOOMBERG OP. (Sep. 21, 2020, 9:55 AM), <https://www.bloomberg.com/opinion/articles/2020-09-21/the-world-is-losing-the-money-laundering-fight>.

This Comment argues that the government’s antiquated money-laundering protections need to be updated and reformed. By way of background, Part I surveys the federal regulation of money laundering and SARs. Part II then discusses how those regulatory efforts have often failed to effectively prevent money laundering. Finally, Part III suggests ways to reform the SARs system, including by increasing the effectiveness of reporting systems and expanding criminal liability in order to hold banks accountable.

I. THE PROBLEM OF MONEY LAUNDERING: HOW THE UNITED STATES ATTEMPTS TO REGULATE BANKS

Money laundering is a global problem. The United Nations reports that between two and five percent of the global gross domestic product—which is equivalent to between \$800 billion and \$2 trillion—is laundered globally every single year.⁸ The trail of money laundering is far-reaching and varied, ranging from elder money scams⁹ to schemes involving Hollywood, high-class restaurants, and luxury real estate.¹⁰ Some of the largest financial institutions, including JPMorgan Chase, HSBC, and Bank of New York Mellon, continued to move money for suspected criminals after being prosecuted or fined for financial misconduct.¹¹

In the United States, Congress has put forth multiple regulatory measures to combat the problem of money laundering, including the Bank Secrecy Act of 1970 (“BSA”).¹² The statute imposed on banks a duty to help regulatory and investigative agencies both identify and take action against entities engaging in money-laundering activities.¹³ Under the BSA, banks are required to file SARs within thirty days of detecting suspected acts that might constitute money laundering activities.¹⁴ Additionally, the BSA requires banks to report any cash transactions over a daily aggregate

8. *Money-Laundering*, U.N. OFF. ON DRUGS & CRIME, <https://www.unodc.org/unodc/en/money-laundering/overview.html> (last visited Jan. 5, 2021); *see also Treasury: U.S. Money-Laundering Totals \$300B Annually*, A.B.A. BANKING J. (June 15, 2015), <https://bankingjournal.aba.com/2015/06/treasury-u-s-money-laundering-totals-300b-annually> (noting that approximately \$300 billion is laundered annually just within the United States).

9. Press Release, Fin. Crimes Enf’t Network, FinCEN Analysis: Bank Secrecy Act Reports Filed by Fin. Instits. Help Protect Elders from Fraud and Theft of Their Assets (Dec. 4, 2019), <https://www.fincen.gov/news/news-releases/fincen-analysis-bank-secrecy-act-reports-filed-financial-institutions-help> (identifying the major scam categories as “Romance,” “Emergency/Person-in-need,” and “Prize/Lottery”).

10. Leopold et al., *supra* note 1.

11. *Id.*

12. *See* 31 U.S.C. §§ 5311–5314, 5316–5332; McBride, *supra* note 5, at 1046.

13. *See* McBride, *supra* note 5, at 1046.

14. *See* COMPTROLLER OF THE CURRENCY, *supra* note 2 (stating that financial institutions must “[f]ile reports of cash transactions exceeding \$10,000” in the daily aggregate and “[r]eport suspicious activities that might signal criminal activity[,]” like money laundering or tax evasion).

amount of \$10,000.¹⁵ The BSA also created the Financial Crimes Enforcement Network (“FinCEN”), a bureau within the U.S. Department of the Treasury that serves as the “Financial Intelligence Unit of the United States,”¹⁶ detects trends in money laundering, and manages a government-wide database of financial transactions.¹⁷ The 2001 USA PATRIOT Act further amended the BSA to require banks and other financial institutions to create Customer Identification Programs (“CIPs”), which seek to reduce anonymous transactions by ensuring that banks have a reasonable idea of their customers’ identities.¹⁸

In 1992, Congress passed the Annunzio-Wylie Anti-Money Laundering Act, an amendment to the BSA,¹⁹ which required that banks report suspicious activities to authorities.²⁰ The Act further provides that banks and all officers and employees receive immunity from suit based on these reports, and that SARs are confidential.²¹ SARs are a “treasure trove” of information, as they typically require banks to name any individuals they suspect of illegal activity, describe the transaction, and list the reasons for suspicion.²² Both banks and enforcement agencies are highly opposed to the information contained in SARs being released to the public; banks are averse to publicizing potentially incriminating information about clients, and enforcement agencies fear that disclosure will disincentivize compliance among banks.²³ Accordingly, courts have continuously held that banks may not disclose any information within the reports, or even that they have been filed at all. SARs are not even discoverable under Freedom of Information Act requests.²⁴

15. *FinCEN’s Mandate from Congress*, U.S. TREASURY: FIN. CRIMES ENF’T NETWORK, <https://www.fincen.gov/resources/statutes-regulations/fincens-mandate-congress> (last visited Nov. 15, 2020).

16. *Id.*

17. *Id.* FinCEN also analyzes and disseminates information in support of other law enforcement units, watches and determines trends in money laundering, and performs other regulatory duties. *Id.*

18. 31 C.F.R. § 1020.220 (2020); see *History of Anti-Money Laundering Laws*, FIN. CRIMES ENF’T NETWORK, <https://www.fincen.gov/history-anti-money-laundering-laws> (last visited Nov. 15, 2020).

19. *History of Anti-Money Laundering Laws*, FIN. CRIMES ENF’T NETWORK, <https://www.fincen.gov/history-anti-money-laundering-laws> (last visited Dec. 26, 2020).

20. *Id.* (explaining that the Annunzio-Wylie Act strengthened penalties when banks violated anti-money laundering rules and required SARs). See, e.g., *Cotton v. PrivateBank & Trust Co.*, 235 F. Supp. 2d 809, 812 (N.D. Ill. 2002).

21. See *Cotton*, 235 F. Supp. 2d at 812–13.

22. Alex C. Lakatos & Mark G. Hanchet, *Confidentiality of Suspicious Activity Reports*, 124 BANKING L.J. 794, 794–95 (2007).

23. *Id.* at 795.

24. See, e.g., *Cotton*, 235 F. Supp. 2d at 813 (noting that SARs and the information contained therein are confidential). But see *Weil v. Long Island Sav. Bank*, 195 F. Supp. 3d 383, 389 (E.D.N.Y. 2001) (holding that while SARs themselves are not discoverable, supporting documentation is).

II. HOW THE U.S. REGIME FAILS TO STOP MONEY LAUNDERING

This Part describes how, despite Congress's intent to halt money laundering, the current system of regulation is often ineffective in practice. It explains the shortcomings of SARs, the effects of deferred prosecution agreements, the role of shell companies, and the lack of transparency in the SARs regime.

A. SARs in Practice

SARs often do not lead to investigations of criminal activities.²⁵ In some cases, financial institutions fail to adhere to the anti-money laundering procedures and do not file the required SARs.²⁶ However, the more prevalent issue with SARs is *overreporting* by banks. Because many transactions are unnecessarily flagged, true money-laundering transactions often continue without notice.²⁷ Of the SARs that are filed, only four percent are actually further investigated by authorities.²⁸ If the number of SARs actually correlated with incidences of criminal activity, it might demonstrate that the reports are effective predictors of illegal transactions;²⁹ however, that does not appear to be the case.³⁰ Because bank employees are completing the SARs, subjective reporting standards³¹ lead to overreporting of certain legal transactions, and underreporting of other illegal transactions.³² Ultimately, the system makes it difficult for enforcement agencies even to know how much skepticism an individual SAR should receive,³³ such that a formalized system to efficiently detect suspicious activity does not exist in practice.³⁴

25. See, e.g., Mariano-Florentino Cuéllar, *The Tenuous Relationship Between the Fight Against Money Laundering and the Disruption of Criminal Finance*, 93 J. CRIM. L. & CRIMINOLOGY 311, 364 n.211 (2003) (“Given the information available to banks, it is striking how few investigations are instigated . . .”); Talley & Tokar, *supra* note 6.

26. Press Release, Sec. & Exch. Comm'n, SEC Charges Interactive Brokers with Repeatedly Failing to File Suspicious Activity Reports (Aug. 10, 2020), <https://www.sec.gov/news/press-release/2020-178>.

27. Talley & Tokar, *supra* note 6.

28. Yalman Onaran & Alan Katz, *What's Suspicious? Here's How Banks Apply the Smell Test*, BLOOMBERG NEWS (Sept. 21, 2020, 9:10 PM), <https://www.bloomberg.com/news/articles/2019-05-23/what-s-suspicious-here-s-how-banks-apply-smell-test-quicktake>.

29. See Cuéllar, *supra* note 25, at 428.

30. *Id.* at 429.

31. The reporting standards are “subjective” because banks have broad discretion to decide how to scrutinize transactions, and when to report them. See, e.g., Onaran et al., *supra* note 28 (noting that some banks outsource reporting on suspicious transactions to “lower-paid clerks in India or other emerging markets”).

32. Cuéllar, *supra* note 25, at 430.

33. See *id.* at 431 (describing how “[i]t is admittedly difficult to assess the degree of law enforcement concern that an individual SAR should trigger”).

34. *Id.* at 432–33.

Additionally, while the requirement for SARs incentivizes reporting, it often does not halt criminal activity. Banks may have an economic interest in being reserved in their filing of SARs, and the subjectivity of the entire system makes it difficult for proper penalties to be assessed for a failure to report.³⁵ It is common for banks to file SARs on a transaction, but still to process it and to allow the potential financial crime to continue.³⁶ Ultimately banks are most focused on compliance and avoiding penalties; they are overreporting to ensure that they are not penalized but they are still facilitating illegal activity and the SARs are not helping to stop it.³⁷ FinCEN and other regulatory agencies are focused on ensuring that the banks comply rather than halt the suspicious activity.³⁸

B. Deferred Prosecution Agreements

The prevalence of deferred prosecution agreements for companies engaged in money laundering also leads to under-enforcement of criminal laws. When banks are caught permitting money laundering to occur, they often enter into deferred prosecution agreements (“DPAs”) and are forced to pay civil penalties.³⁹ Under DPAs, banks are not criminally prosecuted, and instead are required to improve their compliance measures.⁴⁰ The U.S. Department of Justice (“DOJ”) has stated that the banks are “being held accountable for illegal transactions” with these agreements.⁴¹

35. *Id.* at 431 (explaining that the subjectivity of the entire system makes it difficult for proper penalties to be assessed for a failure to report).

36. Noam Scheiber & Emily Flitter, *Banks Suspected Illegal Activity, but Processed Big Transactions Anyway*, N.Y. TIMES (Sept. 20, 2020), <https://www.nytimes.com/2020/09/20/business/fincen-banks-suspicious-activity-reports-buzzfeed.html>; see Leopold et al., *supra* note 1 (explaining that JPMorgan Chase filed eight or more SARs for transactions totaling more than \$10 million by Paul Manafort’s companies and accounts before his ultimate conviction for tax fraud in 2018).

37. See Scheiber & Flitter, *supra* note 36; Elliot Smith, *Blame the System for FinCen Files, Not the Banks, Experts Urge*, CNBC (Sept. 22, 2020, 11:18 AM), <https://www.cnbc.com/2020/09/22/blame-the-system-for-fincen-files-not-the-banks-experts-urge.html>.

38. See Smith, *supra* note 37.

39. Ben Hallman, Spencer Woodman, Will Fitzgibbon & Karrie Kehoe, *Six Money Laundering Reforms that Experts Say Need to Happen Right Now*, INT’L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Oct. 19, 2020), <https://www.icij.org/investigations/fincen-files/6-money-laundering-reforms-that-experts-say-need-to-happen-right-now/>; see Press Release, Dep’t of Just., HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit \$1.256 Billion in Deferred Prosecution Agreement (Dec. 11, 2012), <https://www.justice.gov/opa/pr/hsbc-holdings-plc-and-hsbc-bank-usa-na-admit-anti-money-laundering-and-sanctions-violations>.

40. See, e.g., Press Release, Dep’t of Just., HSBC Holdings Plc. And HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit \$1.256 Billion in Deferred Prosecution Agreement (Dec. 11, 2012), <https://www.justice.gov/opa/pr/hsbc-holdings-plc-and-hsbc-bank-usa-na-admit-anti-money-laundering-and-sanctions-violations>.

41. *Id.*

DPAs “have become a mainstay of white-collar criminal law enforcement,”⁴² but support for them is mixed. While DPAs do allow for the criminal matters to be resolved more efficiently and allow the government to mandate compliance measures, ultimately the focus is on reform, and not punishing criminal wrongdoing.⁴³ Between 2001 and 2012, almost half the DPA agreements with companies did not even include any criminal fines.⁴⁴ Regardless of the fines, the effectiveness of these DPAs seems minimal, given that the same major U.S. banks are continuously settling cases with federal prosecutors year after year.⁴⁵

The updated compliance measures, such as the Annunzio-Wylie Act of 1992, do not appear to be changing banks’ activities,⁴⁶ which is only further demonstrated by the FinCEN files.⁴⁷ The same banks that have settled multiple cases are still facilitating the potentially illegal transfer of money across the globe.⁴⁸ Between 2010 and 2020, eighteen different financial institutions have received DPAs, and at least four of them broke the same law again, and simply received another fine.⁴⁹ In two of the cases, the federal government simply renewed the bank’s prior DPA.⁵⁰ Neither the mandated SARs nor the DPAs have fully functioned to deter money laundering.

C. Shell Companies

Shell companies, which disguise the true owners of various assets, also facilitate continued money laundering.⁵¹ FinCEN defines shell companies as “limited liability companies and other business entities with no significant assets or ongoing business activities.”⁵² While certain information is required in order to form a corporation in the United States, such as officers and directors, information about the true beneficiaries of the company is not.⁵³ In fact, the SARs leaked to *BuzzFeed News* demonstrated how banks lack information about many of their clients; while

42. Peter R. Reilly, *Corporate Deferred Prosecution as Discretionary Injustice*, 2017 UTAH L. REV. 839, 841 (2017) (quoting Lanny A. Breuer, Assistant Att’y Gen., Dep’t of Just., Address at the N.Y.C. Bar Ass’n (Sept. 13, 2012), <https://www.justice.gov/opa/speech/assistant-attorney-general-lanny-breuer-speaks-new-york-city-bar-association>).

43. *Id.* at 842–43.

44. Brandon L. Garrett, *The Rise of Bank Prosecutions*, 126 YALE L.J.F., 33, 40 (2016).

45. *Id.* at 41.

46. *Id.* at 43.

47. *See generally* Leopold et al., *supra* note 1.

48. *Id.*

49. *Id.*

50. *Id.*

51. Steven M. D’Antuono, Acting Deputy Assistant Dir., FBI Crim. Investigative Div., Statement Before the Senate Banking, Housing, and Urban Affairs Comm. on Combating Illicit Financing by Anonymous Shell Companies (May 21, 2019).

52. FIN. CRIMES ENF’T NETWORK, THE ROLE OF DOMESTIC SHELL COMPANIES IN FINANCIAL CRIME AND MONEY LAUNDERING: LIMITED LIABILITY COMPANIES (Nov. 2006), https://www.fincen.gov/sites/default/files/shared/LLCAssessment_FINAL.pdf.

53. D’Antuono, *supra* note 51.

the reports require information such as address and country code, bank officials often left this information blank.⁵⁴ These inconsistencies could reveal the urgency banks feel to file the SARs,⁵⁵ but also that shell corporations further complicate the efficacy of the reports.⁵⁶

As a result, domestic shell companies can allow for billions of dollars to be moved across the globe, while banks remain ignorant of the true beneficiaries of this money.⁵⁷ For example, one of the largest unregulated industries in the country is the art industry, which brings in about \$28.3 billion a year.⁵⁸ The FinCEN files revealed that a shell company called Pantheon Worldwide Limited “exchanged millions of dollars in cash and relics with alleged antiquities traffickers.”⁵⁹ Financial secrecy and anonymity allowed for this to occur; the shell company’s bank did not even know the purpose of the company.⁶⁰

D. Punishments for Leaking

Finally, the lack of transparency surrounding the use of SARs shields banks and regulators from public reproach for their failure to stop criminal wrongdoing. The U.S. Department of the Treasury (“Treasury”) makes clear that the unauthorized disclosure of SARs is a federal crime because of its potential impact on national security and law enforcement’s ability to conduct investigations.⁶¹ This implied gag order, which covers any information about suspected illegal activity, is to allow the government to investigate this suspicious activity. But given that only four percent of all SARs are even investigated, this purpose is not being served. In the case of the FinCEN files, the matter was referred to both the U.S. Department of Justice and Treasury’s Office of Inspector General.⁶² Currently *BuzzFeed* journalists are under investigation for exposing government secrets through the FinCEN files. This is because even SARs that relate to high-level government officials often remain secret. In 2018, a senior Treasury official was charged with the unauthorized disclosure of SARs in relation to Special

54. Emilia Díaz-Struck, *From a Jumble of Secret Reports, Damning Data on Big Banks and Dirty Money*, INT’L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Sep. 20, 2020), <https://www.icij.org/investigations/fincen-files/mining-sars-data/>.

55. *Id.*

56. *Id.*

57. FIN. CRIMES ENF’T NETWORK, *supra* note 52.

58. Spencer Woodman, *Secretive High-End Art World Can Be Vehicle for Dirty Money, US Treasury Warns*, INT’L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Nov. 4, 2020), <https://www.icij.org/investigations/fincen-files/secretive-high-end-art-world-can-be-vehicle-for-dirty-money-us-treasury-warns>.

59. *Id.*

60. *Id.*

61. *Statement by FinCEN Regarding Unlawfully Disclosed Suspicious Activity Reports*, FIN. CRIMES ENF’T NETWORK (Sept. 1, 2020), <https://www.fincen.gov/news/news-releases/statement-fincen-regarding-unlawfully-disclosed-suspicious-activity-reports#>.

62. *Id.*

Counsel Robert Mueller’s investigation into President Trump.⁶³ The secrecy of SARs, and the large punishment for revealing them, undermines the public’s ability to scrutinize the government’s regulation of money laundering and hold banks accountable.⁶⁴

III. CALLS FOR REFORM

The release of the FinCEN files have led to numerous calls for reform of the entire anti-money laundering system and specifically the SARs, which some call an “antiquated” approach.⁶⁵ One step may be standardizing the system of SARs, which are entirely too subjective and created in narrative form.⁶⁶ For instance, automated systems might help bank officials more efficiently identify suspicious transactions.⁶⁷

Beyond improving the efficacy of SARs in identifying criminal wrongdoing, banks need to be held accountable for their own criminal activity. Banks that suspect criminal activity and money-laundering from clients, but continue to do business with them, should be criminally liable.⁶⁸ Some activists suggest that the government could take a more radical approach and begin arresting the banking executives, or even shut the banks down.⁶⁹ However, arresting bank executives and bringing charges against them is difficult; the cases are complex to explain to juries and many of the issues are caused by the executives being reckless rather than criminal.⁷⁰ Alternatively, Congress could step in and enact federal legislation. Senator Elizabeth Warren has called for the passage of her 2018 “Ending Too Big to Jail Act,” to reform the system of DPAs.⁷¹ The Act would also create a new unit within Treasury that would focus on investigating financial crimes related to money laundering.⁷²

63. Devlin Barrett, Matt Zapotosky & Rachel Weiner, *Senior Treasury Employee Charged with Leaking Documents Related to Russia Probe*, WASH. POST (Oct. 17, 2018, 1:33 PM), <https://www.washingtonpost.com/world/national-security/senior-treasury-employee-charged-with-leaking-documents-related-to-russia-probe/2018/10/17/74f67faa-d226-11e8-83d6-291fceed2ab1>.

64. Leopold et al., *supra* note 1.

65. Talley & Tokar, *supra* note 6; *see, e.g.*, Martinuzzi, *supra* note 7; Jason Leopold & Jessica Garrison, *Elizabeth Warren and Bernie Sanders Want Big Banking Reforms Following the FinCEN Files Investigations*, BUZZFEED NEWS (Sept. 21, 2020, 6:28 PM), <https://www.buzzfeednews.com/article/jasonleopold/elizabeth-warren-bernie-sanders-fincen-files>.

66. Martinuzzi, *supra* note 7.

67. *Id.*

68. Leopold et al., *supra* note 1.

69. *Id.* But for an explanation of why banking executives often are not arrested, *see* Jesse Eisinger, *Why Only One Top Banker Went to Jail for the Financial Crisis*, N.Y. TIMES MAGAZINE (Apr. 30, 2014), <https://www.nytimes.com/2014/05/04/magazine/only-one-top-banker-jail-financial-crisis.html>.

70. Eisinger, *supra* note 69.

71. *See* Leopold & Garrison, *supra* note 65.

72. *Id.*

Because the government does not have the time or ability to process and investigate the vast majority of SARs that are filed, most illegal activity will slip through the cracks of the investigative agencies. Banking officers may not be empowered to stop illegal activity, or encourage their institutions to do so, because they realize that the millions of SARs filed have little effect on ultimately stopping money laundering.⁷³ As a result, better supervision of banking officers is necessary.⁷⁴ Additionally, some experts have called for the end to anonymous shell companies because they make it more difficult for law enforcement and bank officers to identify perpetrators of money laundering.⁷⁵ Currently two bills are before Congress which would require owners of U.S. companies to disclose their identity to FinCEN.⁷⁶ The Corporate Transparency Act would require “certain new and existing small corporations and limited liability companies to disclose information about their beneficial owners.”⁷⁷ The bill would also authorize both civil and criminal penalties for reporting fraudulent information about company ownership.⁷⁸ The House of Representatives passed the Corporate Transparency Act on October 22, 2019, but it has not yet been passed in the Senate.⁷⁹ Nevertheless, the movement has support from many groups, including banks, law enforcement, state attorneys general, and the U.S. Chamber of Commerce, demonstrating the tremendous need for reform.⁸⁰

CONCLUSION

The current anti-money laundering system created by the BSA—specifically the requirement that banks file SARs in every instance in which they notice possible suspicious or illegal activity—is ineffective at preventing global money laundering. Banks, focused solely on avoiding compliance penalties, submit too many SARs, most of which FinCEN cannot investigate.⁸¹ This is partially because the drafting of SARs as it exists today is incredibly subjective and far too human-based. Beyond this, banks simply are not held accountable when they allow criminal activity to continue. Continuous DPAs mean that banks can engage in the same illegal activity over and over, without any criminal liability. Instead, banks can keep clients who they know are laundering money, and FinCEN and other agencies can fail to investigate, all while the public remains essentially in the dark. Money laundering has deleterious effects: it allows for other crime

73. Hallman et al., *supra* note 39.

74. *Id.*

75. *Id.*

76. *Id.*

77. H.R. 2513, 116th Cong. (2019–20) (as passed by House, October 22, 2019).

78. *Id.*

79. *Id.*

80. Paul McLeod, *Congress is Close to Ending Anonymous Shell Companies*, BUZZFEED NEWS (Oct. 5, 2020, 2:15 PM), <https://www.buzzfeednews.com/article/paulmcleod/shell-companies-laws-congress-fincen-files>.

81. Leopold et al., *supra* note 1.

to occur, it furthers wealth inequality, and it ultimately harms democracy. Both the government and bank officers on the front lines need to be held more accountable, which can be accomplished, at least in part, through updates to the antiquated SARs system.