
3-1-2023

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Recommended Citation

Kacie T. England, *A Unified Front: The Need for a Comprehensive, Centralized Network for Financial Institutions and Law Enforcement to Collaborate on Anti-Human Trafficking Efforts*, 27 N.C. BANKING INST. 284 (2023).

Available at: <https://scholarship.law.unc.edu/ncbi/vol27/iss1/14>

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A Unified Front: The Need for a Comprehensive, Centralized Network for Financial Institutions and Law Enforcement to Collaborate on Anti-Human Trafficking Efforts

I. INTRODUCTION

Human trafficking, a modern-day form of slavery, is a crime under federal law.¹ The United States (“U.S.”) positions itself as an international human trafficking watchdog by publishing the Trafficking in Persons Report each year to track global trafficking statistics and prevention measures.² Still, every day, traffickers within the U.S. continue to utilize financial services to conduct and obscure their crimes.³ To address this problem, the U.S. has implemented laws that essentially fall into two categories: transparency and detection.⁴ Transparency laws require corporate entities to review their practices and report instances of human trafficking in their business dealings.⁵ Detection laws require financial institutions (“FIs”) to review accounts

1. *Federal Law*, NAT’L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/what-human-trafficking/federal-law#:~:text=Human%20trafficking%2C%20also%20known%20as,state%20in%20the%20United%20States> [perma.cc/TQB6-4RLA] (last visited Sept. 6, 2022).

2. *See Trafficking in Persons Report*, U.S. DEP’T OF STATE, <https://www.state.gov/trafficking-in-persons-report/> [perma.cc/N9C3-4NAA] (last visited Sept. 6, 2022) (making available all department reports on human trafficking statistics since 2017).

3. *See Sarah Dohoney Byrne, Financial Institutions are Poised to Take Next Step in Combatting Human Trafficking*, THOMSON REUTERS (Jan. 11, 2021), <https://www.thomsonreuters.com/en-us/posts/investigation-fraud-and-risk/human-trafficking-financial-institutions/> [perma.cc/LGX4-AEEW] (providing a brief overview of financial institutions role in combating human trafficking).

4. *See FinCEN’s Legal Authorities*, FIN. CRIMES ENF’T NETWORK [hereinafter *FinCEN’s Legal Authorities*], <https://www.fincen.gov/index.php/resources/statutes-regulations> [perma.cc/72GD-TPGY] (last visited Sept. 6, 2022) (listing the sources of authority from which FinCEN draws its power to enforce transparency and investigative legal obligations against financial institutions).

5. *See Ingrid Landau, Human Rights Due Diligence and the Risk of Cosmetic Compliance*, 20 MELB. J. INT’L L. 221, 230 (2019) (discussing reporting requirements imposed on commercial entities employed to encourage transparency and detection of human trafficking at all levels of their business operations, an issue which this Note does not focus on because transparency laws of this sort primarily focus on commercial entities and not their financial counterparts).

and report indicators of human trafficking to law enforcement.⁶ Yet, despite these efforts, human trafficking persists.⁷ One theory for why human trafficking remains an issue is that FIs are not taking their role in combating the problem seriously.⁸ To force FIs to address human trafficking, some policy experts believe laws that publicly shame FIs for noncompliance would lead to a more substantial decrease in trafficking.⁹ But what if the problem is not that FIs are callous to the plight of trafficking, but rather are inadequately supported in their role?

As this Note will explore, most FIs are at least attempting to fulfill their duty to monitor for illegal activity by implementing detection technology and training.¹⁰ Traffickers, however, are often highly sophisticated parties, who may spread their criminal behaviors across many institutions.¹¹ This makes it difficult for any single FI to

6. See *FinCEN's Legal Authorities*, *supra* note 4 (listing the legal obligations financial institutions must maintain records on clients and implement systems to detect illicit activity within those records to assist with criminal investigations).

7. See *Analysis of 2020 National Human Trafficking Hotline Data*, POLARIS, <https://polarisproject.org/2020-us-national-human-trafficking-hotline-statistics/> [perma.cc/WK3M-ZJ48] (last visited Sept. 6, 2022) (finding 10,583 instances of trafficking reported via the U.S. National Human Trafficking Hotline, representing 16,658 victims of trafficking).

8. See Ashley Feasley, *Deploying Disclosure Laws to Eliminate Forced Labour: Supply Chain Transparency Efforts of Brazil and the United States of America*, 5 ANTI-TRAFFICKING REV. 30, 42 (2015) (noting the US business community's resistance to disclosure laws and other heightened regulations to track customer transactions).

9. See *id.* at 5 (“While no sanctions exist for those banks that offer credit to blacklisted companies, Decree No. 1.150 nonetheless gives guidance to lending institutions and is a good example of the complementary regulation enacted to bolster the impact of the Dirty List and incentivise business community adherence.”); see also UNITED NATIONS UNIVERSITY, 25 KEYS TO UNLOCK THE FINANCIAL CHAINS OF HUMAN TRAFFICKING AND MODERN SLAVERY 17–18 (2017), https://collections.unu.edu/eserv/UNU:6232/BreakingtheFinancialChains_FullBooklet_Web.pdf [perma.cc/V7C5-YHNN] (“Financial institutions are only now beginning to appreciate the connection between due diligence for compliance and due diligence for investment and lending.”).

10. See Byrne, *supra* note 3 (“Financial institutions have demonstrated a commitment to making an impact, even as the hard work in enforcing and monitoring a multi-faceted and survivor-centered program continues.”); see also FIN. CRIMES ENF'T NETWORK, *1st Review of the Suspicious Activity Reporting System (SARS)* (April 1998) [hereinafter *1st Review*], <https://www.fincen.gov/1st-review-suspicious-activity-reporting-system-sars> [perma.cc/95QF-EUHV] (“[T]he banking community has made strong efforts to support the SARS.”).

11. See U.S. DEP'T OF THE TREASURY, NATIONAL STRATEGY FOR COMBATING TERRORIST AND OTHER ILLICIT FINANCING 9 (2020), <https://home.treasury.gov/system/files/136/National-Strategy-to-Counter-Illicit-Financev2.pdf> [perma.cc/SM96-4WSJ] (“Many of the fraud schemes, as well as drug and human trafficking, use a network of money mules who either unwittingly or knowingly

pinpoint enough suspicious activity to support a successful investigation into the problematic actors.¹² Therefore, to eradicate human trafficking, FIs and enforcement bodies must collaborate to get one step ahead of their criminal counterparts.¹³

As of 2022, while federal efforts to combat human trafficking in the financial sector include multiple information-sharing mechanisms, many of these methods miss key stakeholders or are entirely voluntary for FIs, leaving unacceptable gaps in detection.¹⁴ Calling all FIs into a cohesive assault on human trafficking could radically improve the enforcement of existing requirements in the financial sector and lead to more successful investigations and prosecutions of traffickers.¹⁵ This Note, therefore, recommends establishing a multi-stakeholder—potentially mandatory—information and communication platform for FIs and enforcement bodies to collaborate on human trafficking detection and investigation.

As already identified, this Note examines the problem of human trafficking as it relates to the U.S. financial industry.¹⁶ Part II provides a brief introduction to human trafficking and its legal definitions, then explains why human trafficking is a relevant concern for the financial sector.¹⁷ Part III examines the most critical legal standards that hold FIs federally accountable for detecting and reporting human trafficking, as well as consequences for noncompliance with these laws.¹⁸ Part IV first presents examples of current efforts by regulators and FIs to ensure compliance, then critiques these efforts by highlighting gaps and

deposit and layer funds on behalf of bad actors. This allows criminals to distance themselves from victims and the source of funds.”).

12. See U.S. GOV’T ACCOUNTABILITY OFF., GAO-22-104807, *TRAFFICKING AND MONEY LAUNDERING: STRATEGIES USED BY CRIMINAL GROUPS AND TERRORISTS AND FEDERAL EFFORTS TO COMBAT THEM* 37 (2021) [hereinafter GAO-22-104807], <https://www.gao.gov/assets/gao-22-104807.pdf> [perma.cc/SCZ7-MHU3] (“For example, some institutions noted they only see a small piece of an illicit finance scheme and could improve their reporting if they better understood the larger picture.”).

13. See *id.* at 29 (commenting that traffickers are “sophisticated criminal actors,” and law enforcement agencies and FIs must collaborate to detect criminal activities in finance).

14. See *id.* at 29–41 (exploring the various regulatory schemes used to address human trafficking in finance and noting areas where financial institutions find regulation lacking or unhelpful).

15. See *id.* at 37–39 (reporting financial institutions and law enforcement agencies’ requests for greater communication and information sharing).

16. See *supra* text accompanying notes 1–15.

17. See *infra* Part II.

18. See *infra* Part III.

inefficiencies in the presently disjointed framework.¹⁹ Part V makes recommendations for strengthening these efforts through the creation of a more comprehensive and efficient platform for FIs and enforcement agencies to share information and collaborate on anti-human trafficking campaigns.²⁰ Part VI summarizes the argument and concludes this Note.²¹

II. DEFINING HUMAN TRAFFICKING AND ITS RELATIONSHIP TO THE FINANCIAL SECTOR

Under U.S. law, human trafficking involves the “use of force, fraud, or coercion” to subject a person to involuntary commercial sex acts, servitude, debt bondage, or slavery.²² According to the United Nations Office on Drugs and Crime’s (“UNODC”) 2020 Global Report on Trafficking in Persons, in 2018, 148 countries reported about 50,000 human trafficking victims.²³ Victims may be of any gender, age,

19. *See infra* Part IV.

20. *See infra* Part V.

21. *See infra* Part VI.

22. 22 U.S.C. § 7102(11) (2018); *see* § 7102(12), (11)(A) (2018) (defining “sex trafficking” as “the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act” - including any induced commercial sex act involving a minor), § 7102(8) (defining “involuntary servitude” as being “induced by . . . (A) any scheme, plan, or pattern intended to cause a person to believe that, if [she/he] did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or (B) the abuse or threatened abuse of the legal process.”), § 7102(7) (defining “debt bondage” as a debtor’s status arising from the debtor’s pledge of his/her personal services (or services of a person under debtor’s control) “as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined”); *see also* § 7101 (2018) (stating that the purpose of the Trafficking Victim Protection Act is “to combat trafficking in persons, a contemporary manifestation of slavery . . . to ensure just and effective punishment of traffickers, and to protect their victims.”); *cf.* United Nations G.A. Res. 55/25, annex, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, at 32 (Jan. 8, 2001), https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_55_25.pdf [perma.cc/F326-DSUM] (providing the nearest international legal definition of “Trafficking in persons” as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability” or enticing someone who holds control over another person to consent to that other person’s exploitation).

23. *See Human Trafficking FAQs*, UNITED NATIONS OFF. ON DRUGS & CRIME [hereinafter *Human Trafficking FAQs*], <https://www.unodc.org/unodc/en/human->

nationality, and socio-economic background.²⁴ That said, traffickers tend to target particularly vulnerable people, such as those who have been marginalized or face other challenging circumstances.²⁵ Using a variety of violent and fraudulent tactics, traffickers coerce and entrap victims in exploitative relationships.²⁶ An array of industries benefit from the illegally extracted labor of human trafficking victims, with the most predominant areas being sex work, agriculture, manufacturing, construction, mining, utilities, and domestic work.²⁷

As the UNODC states, “[n]o industry or economic sector is immune to human trafficking.”²⁸ In many ways, the same sentiment is true for finance: no industry or economic sector is immune from the need for financial services.²⁹ Regardless of the moral or legal legitimacy of any enterprise, almost all money-making ventures engage with a FI at some level.³⁰ Indeed, financial gain is the central motive of many criminal endeavors,³¹ and human trafficking is estimated to be

trafficking/faqs.html [perma.cc/P2JG-4HGG] (last visited Sept. 6, 2022) (citing UNITED NATIONS OFF. ON DRUGS & CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS: 2020, at 25 (2021)).

24. *Human Trafficking*, UNITED NATIONS OFF. ON DRUGS & CRIME, <https://www.unodc.org/unodc/en/human-trafficking/human-trafficking.html> [perma.cc/7LKN-UMXH] (last visited Oct. 10, 2022).

25. *See What Makes Someone Vulnerable to Human Trafficking?*, GOV’T OF B.C., <https://alpha.gov.bc.ca/gov/content/justice/criminal-justice/victims-of-crime/human-trafficking/human-trafficking-training/module-1/vulnerabilities> [perma.cc/GG8N-D3E9] (last visited Oct. 22, 2022) (noting that because “[t]raffickers look for people who are vulnerable and therefore easier to exploit,” political instability, poverty, racism and the legacy of colonialism, gender inequality, addictions, mental health, gang involvement, and online vulnerability are all major factors that cause or contribute to people being vulnerable to trafficking).

26. *Human Trafficking FAQs*, *supra*, note 23.

27. INT’L LAB. OFF., PROFITS AND POVERTY: THE ECONOMICS OF FORCED LABOR 16–17 (2014), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf [perma.cc/6V84-XPQF].

28. *Human Trafficking FAQs*, *supra*, note 23.

29. *See* The Investopedia Team, *Importance and Components of the Financial Services Sector*, INVESTOPEdia (last updated Feb. 23, 2021), <https://www.investopedia.com/ask/answers/030315/what-financial-services-sector.asp> [perma.cc/38CA-TSSW] (“Financial services make up one of the economy’s most important and influential sectors.”).

30. *See* Katherine D. Oleson, *Follow the Money: A Look at the Role of Anti-Money Laundering Surveillance in the Fight Against Human Trafficking* 4 (August 2022) (M.S. Capstone Project, Utica University), <https://www.proquest.com/docview/2705006560?pq-origsite=scholar&fromopenview=true> [perma.cc/X5RV-6XNG] (“[T]raffickers depend on legitimate organizations [like banks] to conduct their own business.”).

31. *See What is Money Laundering*, FIN. CRIMES ENF’T NETWORK, <https://www.fincen.gov/what-money->

one of the world's most profitable crimes.³² As such, traffickers regularly leverage FIs' services to conceal their illegal activity and yield higher returns on their crimes.³³ So, as pedantic as it may sound, money is the thread that connects the financial industry to human trafficking.³⁴ Knowing that traffickers routinely utilize the financial system, FIs are particularly well-positioned to identify exploitation and collect evidence to assist with prosecuting these criminal enterprises.³⁵ As Thomson Reuters Foundation CEO, Monique Villa, stated, "Follow the money and you will get to the traffickers."³⁶

Profit protection is not only a concern for traffickers; FIs have strong incentives to protect their bottom lines, and while detection work may have costs on the front end, the penalties for being associated with human rights violations should encourage FI investment in anti-human

laundering#:~:text=Money%20laundering%20involves%20disguising%20financial,with%20an%20apparently%20legal%20source [perma.cc/GL9E-MMR3] (last visited Sept. 22, 2022) (commenting that profit and greed motivate crime).

32. See OFF. TO MONITOR & COMBAT TRAFFICKING IN PERSONS, REPORT TO CONGRESS ON AN ANALYSIS OF ANTI-MONEY LAUNDERING EFFORTS RELATED TO HUMAN TRAFFICKING, SECTION 7154(A) OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2020, at 1 (2020) ("In addition to its enormous human cost, human trafficking is estimated to be one of the most profitable crimes in the world."); *ILO Says Forced Labour Generates Annual Profits of US\$ 150 Billion*, INT'L LAB. ORG. (May 20, 2014), https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang-en/index.htm [perma.cc/D76B-N3WC] (reporting that forced labor generates \$150 billion in illegal profits per year in the global economy, with \$99 billion coming from commercial sex trafficking and \$51 billion coming from forced labor).

33. See *Bank Secrecy Act (BSA)*, OFF. OF THE COMPTROLLER OF THE CURRENCY [hereinafter *Bank Secrecy Act (BSA)*], <https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html> [perma.cc/6H3C-SGFD] (last visited Sept. 6, 2022) ("Criminals have long used money-laundering schemes to conceal or 'clean' the source of fraudulently obtained or stolen funds."); see also OFF. TO MONITOR & COMBAT TRAFFICKING IN PERSONS, *supra* note 32 ("The movement of funds generated by human trafficking can constitute money laundering . . .").

34. See Oleson, *supra* note 30, at 5 (discussing the use of money laundering in human trafficking).

35. See Concept Note, Thomson Reuters Foundation, Banks Alliance Against Trafficking 2, <https://www.trust.org/banks-alliance/> [perma.cc/A7M8-B5NW] (last visited Sep. 6, 2022) ("Where traffickers exploit the formal banking system to spend, transfer and launder illegal profits, banks and money service businesses have access to financial data that can be used to identify cases of exploitation and provide the evidence needed to disrupt it and prosecute those responsible.").

36. Press Release, Thomson Reuters Foundation, Thomson Reuters Foundation Launches Resource to Help Financial Institutions Tackle Human Trafficking (July 19, 2018), <https://www.trust.org/i/?id=928ac731-8e74-40db-985a-5e5a4464a86b> [perma.cc/4DWF-RKBF].

trafficking pursuits.³⁷ FIs may face reputational damage if the public becomes aware of repeated failures to detect and report signs of human trafficking in their accounts.³⁸ A positive reputation is an asset for a FI because it influences how and whether consumers, other financial entities, and the government interact with the FI.³⁹ In particular, the newest generation of financial consumers increasingly consider what environmental, social, and governance (“ESG”) initiatives a FI supports when choosing where to conduct a transaction.⁴⁰ Thus, FIs have a strong economic incentive, independent of any moral motivation, to address human trafficking concerns within their accounts, lest they be reported for violations and subject to resulting customer flight.⁴¹

The threat of cancel culture is by no means the only mechanism incentivizing FIs to combat human trafficking. Several federal laws direct FIs to detect and report financial crimes, including human trafficking.⁴² Noncompliance with these dictates can result in legal and financial consequences for a FI.⁴³ The most relevant of these laws are discussed below.⁴⁴

37. See Kishanthi Parella, *Article: Improving Human Rights Compliance in Supply Chains*, 95 NOTRE DAME L. REV. 727, 749–51 (2019) (arguing that reputation is valuable for corporations because it influences how stakeholders and constituents engage with the entity).

38. See Jessica Szymeczek, *Caught in A Bad Romance: Human Trafficking’s Intimate Relationship with Legitimate Businesses*, 49 HOFSTRA L. REV. 1125, 1152 (2021) (“[C]ompanies who participate in human rights violations may face heightened legal or reputational violations.”).

39. See Parella, *supra* note 37 (advancing the benefits of a positive reputation).

40. See Chelsea D’Amore, *The Enduring Importance of Brand, Reputation and Trust in Banking*, AM. BANKERS ASS’N (Mar. 22, 2022), <https://bankingjournal.aba.com/2022/03/the-enduring-importance-of-brand-reputation-and-trust-in-banking/> [perma.cc/8BYR-U98T] (“[Y]oung adults are paying the closest attention to how all the brands they interact with support the causes that matter most to them. According to PwC, consumers ages 17 to 38 are almost twice as likely to consider ESG issues when making a purchasing decision than older consumers.”).

41. *Id.*

42. See *FinCEN’s Legal Authorities*, *supra* note 4 (listing the legal obligations financial institutions must maintain records on clients and implement systems to detect illicit activity within those records to assist with criminal investigations).

43. See U.S. DEP’T OF THE TREASURY, NATIONAL MONEY LAUNDERING RISK ASSESSMENT 40–41 (2018) [hereinafter NATIONAL MONEY LAUNDERING RISK ASSESSMENT], https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf [perma.cc/6APZ-Y8K2] (“The consequence of lax compliance can be very significant depending on the institution and the circumstances.”).

44. See *infra* Part III.

III. FI'S LEGAL OBLIGATIONS TO COMBAT HUMAN TRAFFICKING AS A FINANCIAL CRIME

A. *Anti-Money Laundering Compliance Obligations*

Money laundering is a federal crime, punishable by substantial fines and/or imprisonment.⁴⁵ Under federal law a person commits money laundering when they, knowing the property involved is the proceeds of unlawful activity, conduct (or attempt to conduct) a financial transaction with the intent to promote certain specified unlawful activity or conceal, disguise, or otherwise avoid reporting the unlawful activity at hand.⁴⁶ A person also violates federal law when they knowingly engage in (or attempt to engage in) a monetary transaction in criminally derived property worth more than \$10,000.⁴⁷

The first phase of money laundering involves introducing illegal profits into the financial system.⁴⁸ Congress, therefore, gave FIs a statutory duty to detect and report criminal activity associated with their services, and willful violation of that duty is likewise punishable by substantial fines and/or imprisonment.⁴⁹ The Bank Secrecy Act⁵⁰ (“BSA”) establishes programming, recordkeeping, and reporting

45. 18 U.S.C. § 1956 (2018).

46. 18 U.S.C. § 1956 (2018). *See* § 1956(c)(7) (defining specified unlawful activities of money laundering as tax avoidance; failure to comply with specified transaction reporting requirements; concealment of the nature, ownership, location, source, or control of the financial property; conducting (or attempting to conduct) a financial transaction with property they know was earned unlawfully or used to conduct unlawful activity; or transporting, transferring, or transmitting (or attempting to do so) any property to or from a foreign country).

47. 18 U.S.C. § 1957(a) (2018); *see also* CHARLES DOYLE, CONG. RSCH. SERV., RL33315, MONEY LAUNDERING: AN OVERVIEW OF § 1956 AND RELATED FEDERAL CRIMINAL LAW 21–22 (2017), <https://sgp.fas.org/crs/misc/RL33315.pdf> [perma.cc/E5AJ-FH2J] (“Unless there is some element of promotion, concealment, or evasion, Section 1956 does not make simply spending or depositing tainted money a separate crime. Section 1957 does. It outlaws otherwise innocent transactions contaminated by the origin of the property involved in the transaction.”).

48. *See How is Money Laundered?*, FIN. ACTION TASK FORCE, <https://www.fatf-gafi.org/faq/moneylaundering/> [perma.cc/796Y-TE58] (last visited Jan. 22, 2023) (“[I]nitial[ly] . . . the launderer introduces his illegal profits into the financial system. . . . by breaking up large amounts of cash into . . . smaller sums that are then deposited . . . or by purchasing a series of monetary instruments . . . that are then collected and deposited . . .”).

49. 31 U.S.C. § 5322 (2018).

50. Currency and Foreign Transactions Reporting Act of 1970, 31 U.S.C. §§ 321, 5311–14, 5316–22, 12 U.S.C. §§ 1829b, 1951–59 (2012) (universally referred to as the “Bank Secrecy Act” or the “BSA”).

requirements for FIs as part of a national effort to prevent and prosecute money laundering and other financial crimes.⁵¹ Under the BSA, federal financial regulatory agencies require FIs to report suspicious activity⁵² and implement BSA compliance programs.⁵³ These efforts must include establishing effective customer due diligence systems and monitoring programs for suspicious activity, risk-based anti-money laundering (“AML”) programs,⁵⁴ and screening programs to check for entities against whom there are existing economic and trade sanctions.⁵⁵ An amendment to the BSA also incorporates provisions of the PATRIOT Act,⁵⁶ which requires every bank to adopt a customer identification program.⁵⁷

51. See *Bank Secrecy Act (BSA)*, *supra* note 33 (breaking down the components of the BSA and related federal regulations); 12 U.S.C. § 1951(b) (2018) (“It is the purpose of this chapter to require the maintenance of appropriate types of records and the making of appropriate reports by such businesses in the United States where such records or reports have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.”).

52. 31 C.F.R. § 1020.320 (2022). Each federal bank regulator will have these regulations. See 12 C.F.R. § 21.11 (2022) (codifying the regulation for national banks that are overseen by the Office of the Comptroller of the Currency), § 208.62 (2022) (codifying the regulation for state-chartered banks that are members of the Federal Reserve System), § 353.3 (2022) (codifying the regulation for state banks that are not members of the Federal Reserve Board System, which are overseen by the Federal Deposit Insurance Corporation).

53. 31 C.F.R. § 1010 (2022). Each federal bank regulator will have these regulations. See 12 C.F.R. § 21.21 (2022) (codifying the regulation for national banks that are overseen by the Office of the Comptroller of the Currency), § 208.63 (2022) (codifying the regulation for state-chartered banks that are members of the Federal Reserve System), (2022) (codifying the regulation for state banks that are overseen by the Federal Deposit Insurance Corporation).

54. See *Bank Secrecy Act (BSA)*, *supra* note 33 (breaking down the components of the BSA and related federal regulations).

55. See Office of Foreign Assets Control, *Sanctions Programs and Information*, U.S. DEP’T OF THE TREASURY, <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information> [perma.cc/Q7G5-BDL2] (last visited Sept. 6, 2022) (providing a comprehensive list of all entities against whom the U.S. has economic and trade sanctions).

56. See *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001* § 326, 31 U.S.C. § 5318(l)(1) (2018) (“[T]he Secretary of the Treasury shall prescribe regulations setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution.”).

57. See *Bank Secrecy Act (BSA)*, *supra* note 33 (“The BSA was amended to incorporate the provisions of the USA PATRIOT Act which requires every bank to adopt a customer identification program as part of its BSA compliance program.”).

Following the passage of the BSA, the U.S. Department of the Treasury created the Financial Crimes Enforcement Network⁵⁸ (“FinCEN”) to oversee the implementation of BSA/AML⁵⁹ compliance by developing federal regulations and programs to meet anti-financial crime goals.⁶⁰ As an extension of the U.S. Department of the Treasury, FinCEN has access to information from FIs and law enforcement, and facilitates information sharing between these stakeholders to assist in the successful investigation and prosecution of financial crimes.⁶¹ Therefore, most of the compliance obligations detailed in this Note fall under FinCEN.

One of the most common ways human traffickers use FIs to conceal their illicit activities is through the crime of money laundering.⁶² The objectives of money laundering are generally twofold: avoid criminal prosecution and produce a profit.⁶³ Through

58. 31 U.S.C. § 310 (2018).

59. See *The Bank Secrecy Act*, FIN. CRIMES ENF’T NETWORK, <https://www.fincen.gov/resources/statutes-and-regulations/bank-secrecy-act> [perma.cc/3AHR-ZS26] (last visited Oct. 17, 2022) (“The BSA is sometimes referred to as an ‘anti-money laundering’ (AML) law or jointly as ‘BSA/AML.’ Several acts, including provisions in Title III of the USA PATRIOT Act of 2001, and the Anti-Money Laundering Act of 2020, have been enacted up to the present to amend the BSA.”); see also *BSA/AML Examination Manual*, FED. FIN. INSTS. EXAMINATION COUNCIL BSA/AML INFOBASE, <https://bsaaml.ffiec.gov/manual/Introduction/01> [perma.cc/WRS7-DR4S] (last visited Oct. 1, 2022) (detailing the history of the Bank Secrecy Act and various anti-money laundering legislation and explaining how compliance programs typically address both matters through joint BSA/AML programs because of their intertwined nature).

60. See *Law Enforcement Overview*, FIN. CRIMES ENF’T NETWORK, <https://www.fincen.gov/index.php/resources/law-enforcement-overview> [perma.cc/42XQ-B644] (last visited Oct. 14, 2022) (providing the history of FinCEN and a basic overview of its roles).

61. See *id.* (“The ability to link to a variety of databases provides FinCEN with one of the largest repositories of information available to law enforcement in the country . . . FinCEN provides a networking process designed to facilitate information sharing between agencies with shared investigative interests.”).

62. See FIN. CRIMES ENF’T NETWORK, U.S. DEP’T OF THE TREASURY, ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM NATIONAL PRIORITIES 1, 8 (June 30, 2021) [hereinafter NATIONAL PRIORITIES], [https://www.fincen.gov/sites/default/files/shared/AML_CFT%20Priorities%20\(June%2030%2C%202021\).pdf](https://www.fincen.gov/sites/default/files/shared/AML_CFT%20Priorities%20(June%2030%2C%202021).pdf) [perma.cc/5WKL-8W7R] (naming human trafficking and human smuggling as a national priority for anti-money laundering and countering the financing of terrorism and noting that it is one of the top crimes for generating illicit proceeds in the U.S.).

63. See Maame Nyakoa Boateng, Comment, *Global Partnership Should Be the Way Forward to Combat Money Laundering*, 126 DICK. L. REV. 837, 840 (2022) (describing money laundering as a crime “by which criminals disguise the illegal origins of their financial assets to avoid suspicion from law enforcement”).

placement, layering, and integration tactics, a trafficker can use otherwise legitimate financial transactions to make money obtained through criminal activity appear to be from a legitimate source.⁶⁴ Thus, to successfully combat human trafficking, a FI must take its BSA/AML compliance obligations seriously and adhere to FinCEN's regulations and guidelines.

B. Legal Obligations Related to Customer Identification

Under federal law, FIs are, at a minimum, required to implement customer identification programs that (a) verify the identity of persons “seeking to open an account to the extent reasonable and practicable;” (b) maintain “records of the information used to verify a person’s identity;” and (c) consult “lists of known or suspected terrorists or terrorist organizations provided . . . by any government agency.”⁶⁵ A FI or its employees found to have willfully violated the BSA and its accompanying regulations face serious fines and/or imprisonment.⁶⁶ For violations of the BSA, as defined in the Anti-Money Laundering Act of 2020, penalties also include a fine equal to the profit gained by the violation.⁶⁷ Actions taken with the intent to evade BSA reporting requirements can also be penalized by fines or imprisonment.⁶⁸

In 2018, FinCEN enforced a new Customer Due Diligence Rule⁶⁹ (“CDD Rule”) that requires FIs to identify and verify the identity of beneficial owners⁷⁰ of legal entity customers, subject to specified

64. *See id.* at 840–41 (“Money laundering is a process by which criminals disguise the illegal origins of their financial assets to avoid suspicion from law enforcement agencies Money laundering occurs in three overlapping stages: placement, layering and integration.”).

65. 31 U.S.C. § 5318(l)(2) (2018).

66. 31 U.S.C. § 5322 (2018).

67. 31 U.S.C. § 5322(e)(1) (2018). Additionally, the law provides in subpart (e)(2) that “if the person . . . was a partner, director, officer, or employee of a [FI] at the time the violation occurred, repay to such [FI] any bonus paid to the individual during the calendar year in which the violation occurred or the calendar year after which the violation occurred.” § 5322(e)(2).

68. 31 U.S.C. § 5324 (2018).

69. Customer Due Diligence Requirements for Financial Institutions, 81 Fed. Reg. 29398 (May 11, 2016) (to be codified at 31 C.F.R. pts. 1010, 1020, 1023, 1024, 1026); 31 C.F.R. §§ 1010, 1020, 1023, 1024, 1026 (2022).

70. *See* 31 C.F.R. § 1010.230(d) (2022) (defining beneficial owners as (1) individuals who own 25 percent or more of the legal entity customer; or (2) individuals with “significant responsibility to control, manage, or direct the legal entity customer”).

exclusions and exemptions.⁷¹ The purpose of the CDD Rule is to facilitate the identification of the beneficiaries of proceeds obtained through human trafficking and other financial crimes.⁷² To fulfill their obligations under the Rule, FIs must “maintain written procedures that are reasonably designed” to capture key identification information from all individuals who qualify as “beneficial owners” of a legal entity that opens an account with the FI.⁷³ However, a FI is not obligated to investigate the ownership structure of its customers.⁷⁴ Rather, a FI may rely on the information supplied at the opening of a legal entity customer’s account regarding the identity of all beneficial owners, provided that the FI knows of no facts that would reasonably call into question the reliability of the representation.⁷⁵ If a FI cannot form a reasonable belief that it knows the identity of all beneficial owners, it must follow pre-prepared written procedures to determine if it will open an account at all, open the requested account but continue to investigate the identity of beneficial owners, close an account after repeated failed

71. See FIN. CRIMES ENF’T NETWORK, FIN-2020-A008, SUPPLEMENTAL ADVISORY ON IDENTIFYING AND REPORTING HUMAN TRAFFICKING AND RELATED ACTIVITY 9 (2020) [hereinafter FIN-2020-A008], https://www.fincen.gov/sites/default/files/advisory/2020-10-15/Advisory%20Human%20Trafficking%20508%20FINAL_0.pdf [perma.cc/U3W6-K3DW] (“FinCEN’s [CDD Rule] requires [FIs of several varieties] to identify and verify the identity of beneficial owners of legal entity customers, subject to certain exclusions and exemptions. . . . [This] could facilitate the identification of the beneficiaries of the illicit proceeds.”); see also 31 C.F.R. § 1010.230 (2022) (describing beneficial ownership requirements for legal entity customers).

72. See FIN-2020-A008, *supra* note 71 (“Identifying and verifying the beneficial owners of legal entities could facilitate the identification of the beneficiaries of the illicit proceeds.”); see also 31 C.F.R. § 1010.230 (2022) (describing beneficial ownership requirements for legal entity customers).

73. 31 C.F.R. § 1010.230 (2022); see also *BSA/AML Examination Manual: Beneficial Ownership Requirements for Legal Entity Customers — OVERVIEW*, FED. FIN. INSTS. EXAMINATION COUNCIL BSA/AML INFOBASE, 2–3 (2018) [hereinafter *BSA/AML Examination Manual: Beneficial Ownership Requirements*], https://bsaaml.ffiec.gov/docs/manual/06_AssessingComplianceWithBSARegulatoryRequirements/03.pdf [perma.cc/5DTE-X2AR] (defining identification information as, at a minimum, name, date of birth, address, and applicable government identification numbers).

74. *Financial Crimes Enforcement Network Issues New Frequently Asked Customer Due Diligence Requirement*, SIDLEY AUSTIN LLP (Apr. 10, 2018), <https://www.sidley.com/en/insights/newsupdates/2018/04/fincen-issues-new-faqs-on-customer-due-diligence-requirement> [perma.cc/Y4JC-5KB5].

75. See *BSA/AML Examination Manual: Beneficial Ownership Requirements*, *supra* note 73, at 3 (“A bank may rely on the information supplied by the individual opening the account on behalf of the legal entity customer regarding the identity of its beneficial owner(s), provided that it has no knowledge of facts that would reasonably call into question the reliability of such information.”).

attempts to satisfactorily identify all beneficial owners, and/or report the suspicious activity to FinCEN.⁷⁶

Identifying beneficial owners is crucial for combatting human trafficking.⁷⁷ One of the ways traffickers avoid detection and prosecution for their crimes is by concealing the identity of the true beneficiaries of their companies.⁷⁸ Shell companies—companies that hold funds and manage financial transactions without having actual operations or employees—are attractive tools for financial crimes, such as money laundering.⁷⁹ Shell company formation agents attract clients by advertising services that conceal their clients' identities.⁸⁰ While there are legitimate uses for shell companies,⁸¹ the risk that their lack of transparency may facilitate criminal activity often outweighs their

76. *Id.* at 4; *see infra* notes 85–90 and accompanying text for details on Suspicious Activity Reports.

77. *See* FIN. CRIMES ENF'T NETWORK, THE ROLE OF DOMESTIC SHELL COMPANIES IN FINANCIAL CRIME AND MONEY LAUNDERING: LIMITED LIABILITY COMPANIES 11–12 (2006) [hereinafter THE ROLE OF DOMESTIC SHELL COMPANIES], https://www.fincen.gov/sites/default/files/shared/LLCAssessment_FINAL.pdf [perma.cc/2KLU-FVDL] (identifying the numerous ways financial institutions can link shell companies with crime and work to reveal the identity of the criminal actors behind the shells).

78. *See* Beneficial Ownership Information Reporting Requirements, 86 Fed. Reg. 69920, 69923 (proposed Dec. 8, 2021) (reporting on FinCEN's work to raise awareness of the use of shell companies to “obfuscat[e] beneficial owners, and . . . facilitat[e] criminal activity.”).

79. *E.g.*, THE ROLE OF DOMESTIC SHELL COMPANIES, *supra* note 77, at 2 (“By virtue of the ease of formation and the absence of ownership disclosure requirements, shell companies – generally defined as business entities without active business or significant assets – are an attractive vehicle for those seeking to launder money or conduct illicit activity.”); GAO-22-104807, *supra* note 12, at 20 (“TCOs or terrorist groups also may use shell companies—which are companies that are designed to hold funds and manage financial transactions but that do not have operations or employees—to launder trafficking proceeds by concealing assets and activities through seemingly legitimate businesses.”).

80. Such services may include obtaining business licenses, providing office location and contact information, opening bank accounts, and even selling so-called “shelf companies,” companies, pre-outfitted with essential business pieces like complete tax set-up, bank accounts, and credit. *See* THE ROLE OF DOMESTIC SHELL COMPANIES, *supra* note 77, at 5–6 (discussing the types of services advertised for shell companies).

81. *See* *Potential Money Laundering Risks Related to Shell Companies*, FIN. CRIMES ENF'T NETWORK (Nov. 9, 2006), <https://www.fincen.gov/resources/statutes-regulations/guidance/potential-money-laundering-risks-related-shell-companies> [perma.cc/FN9C-MU3B] (Nov. 9, 2006) (“Most shell companies are formed by individuals and businesses for legitimate purposes, such as to hold stock or intangible assets of another business entity or to facilitate domestic and cross-border currency and asset transfers and corporate mergers.”).

merits.⁸² Despite this, in 2017, the U.S. was among the “most significant” providers of “financial secrecy” through shell companies.⁸³ Until federal regulation takes the threats shell companies pose for perpetuating crimes more seriously, FIs’ work to identify and report suspicious activity related to beneficial owner identification remains a critical tool to combat the secreting of money obtained from offenses like human trafficking.⁸⁴

C. *Legal Obligations Related to Suspicious Activity and Currency Transaction Reports*

Suspicious Activity Reports (“SARs”) are a critical component of BSA/AML compliance for FIs.⁸⁵ A SAR is a document that a FI must file with FinCEN whenever the FI suspects a customer or account

82. See THE ROLE OF DOMESTIC SHELL COMPANIES, *supra* note 77, at 2 (“The advantages of using [shell companies] for legitimate business purposes are in some senses outweighed by the potential for abuse presented by some entities, and by the risks to and potential deleterious effects on the financial system that result from lack of transparency regarding beneficial ownership.”).

83. See Carl Pacini & Nate Wadlinger, *How Shell Entities and Lack of Ownership Transparency Facilitate Tax Evasion and Modern Policy Responses to These Problems*, 102 MARQ. L. REV. 111, 116–17 (2018) (“The world’s most significant providers of financial secrecy, the places that harbor the most concealed assets, are mostly not small palm-fringed islands but rather Switzerland, the United States, Singapore, Luxembourg, and Germany. In 2017, the United States ranked second in terms of providing financial secrecy.”).

84. See THE ROLE OF DOMESTIC SHELL COMPANIES, *supra* note 77, at 11–12 (identifying the numerous ways financial institutions can link shell companies with crime and work to reveal the identity of the criminal actors behind the shells); *cf.* 31 U.S.C. § 5336 (2018) (adding new beneficial ownership reporting requirements for some corporations and limited liability companies, but with many exceptions remaining that allow shell companies to continue to operate legally in the U.S.).

85. See *Bank Secrecy Act (BSA)*, *supra* note 33 (providing an overview of how FIs must complete SARs to remain in compliance with the BSA); FIN. CRIMES ENF’T NETWORK, FINCEN SUSPICIOUS ACTIVITY REPORT (FORM 111) FILING TREND DATA: SECTION 2 - DEPOSITORY INSTITUTION SARs ex. 1 (2022), <https://www.fincen.gov/sites/default/files/shared/Section%20%20-%20Depository%20Institution%20SARs.xlsx> [perma.cc/D5YV-DQGD] (last visited Jan. 12, 2023) (presenting SAR Filing Trend Data which showed that in 2021, 1,426,741 SARs were filed by the Depository Institution Industry, which includes banks, savings and loans, and credit unions). Each federal bank regulator will have these regulations. See 12 C.F.R. § 163.180 (2022) (codifying the regulation for national banks that are overseen by the Office of the Comptroller of the Currency), §§ 208.62, 748.1 (2022) (codifying the regulation for state-chartered banks that are members of the Federal Reserve System), § 353 (2022) (codifying the regulation for state banks that are overseen by the Federal Deposit Insurance Corporation).

is involved in a financial crime.⁸⁶ After detecting potential criminal activity, a FI has thirty days to file a SAR or request an extension to gather more evidence.⁸⁷ SARs are filed electronically and include information about the identity of all involved parties, incident date(s), codes for suspicious activity, and a description of the incident(s).⁸⁸ A SAR narrative should be as detailed as possible to assist law enforcement in using the provided information to complete a successful investigation.⁸⁹ Any documentation or evidence related to a reported incident must be retained by the FI for five years and made available to law enforcement upon request.⁹⁰

Completing the filing and documentation requirements for SARs is critical to successfully leveraging the tool as part of a FI's comprehensive anti-human trafficking program.⁹¹ In 2020, FinCEN published a Supplemental Advisory which gave specific directions for using SARs to report suspected human trafficking.⁹² The Advisory includes “red flag indicators” of human trafficking to assist FIs in identifying the customer behaviors and financial actions most indicative

86. 31 C.F.R. § 1020.320(a)(1) (2022); see *Connecting the Dots . . . The Importance of Timely and Effective Suspicious Activity Reports*, FED. DEPOSIT INS. CORP. (last updated Dec. 28, 2021), https://www.fdic.gov/regulations/examinations/supervisory/insights/siwin07/article03_connecting.html#:~:text=Dollar%20Amount%20Thresholds%20%E2%80%93%20Banks%20are,and%20transactions%20aggregating%20%245%2C000%20or [perma.cc/68HC-5X2B] (describing the circumstances under which FIs are required to file a SAR, based on suspect identification, the amount at issue, and FI discretion).

87. See 31 C.F.R. § 1020.320(b)(3) (2022) (“If no suspect was identified on the date of the detection of the incident requiring the filing, a bank may delay filing a SAR for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days . . .”).

88. See *What Is a Suspicious Activity Report?*, THOMSON REUTERS, <https://legal.thomsonreuters.com/en/insights/articles/what-is-a-suspicious-activity-report> [perma.cc/5BVG-Z3P2] (last visited Jan. 12, 2023) (describing what SARs are and how they are used by FIs).

89. See FIN. CRIMES ENF'T NETWORK, GUIDANCE ON PREPARING A COMPLETE & SUFFICIENT SUSPICIOUS ACTIVITY REPORT NARRATIVE 3 (2003), https://www.fincen.gov/sites/default/files/shared/sarnarrcompletguidfinal_112003.pdf [perma.cc/4TA3-WCKZ] (“[SAR] filings play[s] an important role in identifying potential illegal activities . . . and assist[s] law enforcement in detecting and preventing the flow of illicit funds through our financial system. It is critical that the information provided in a SAR filing be as accurate and complete as possible.”).

90. 31 C.F.R. § 1020.320(d) (2022).

91. See FIN-2020-A008, *supra* note 71, at 1 (“[FinCEN] is issuing this advisory to help save lives, and to protect the most vulnerable in our society from predators and cowards who prey on the innocent and defenseless for money and greed.”).

92. *Id.*

of human trafficking.⁹³ When a FI believes a customer's suspicious activity could relate to human trafficking, they should say so directly in the SAR.⁹⁴

Like SARs, Currency Transaction Reports ("CTRs") are another tool used to maintain BSA/AML compliance.⁹⁵ For each transaction⁹⁶ of more than \$10,000 that goes through a FI, the FI must file a CTR.⁹⁷ The CTR will identify the individual presenting the transaction and the individual(s) benefiting from the transaction.⁹⁸ FIs should have mechanisms to aggregate an individual's transactions so that customers cannot bypass the CTR filing requirement by breaking up large transactions into numerous smaller ones.⁹⁹ If a FI suspects that a person is structuring transactions to evade a CTR filing, it must file a SAR.¹⁰⁰

D. *Legal Consequences of Noncompliance.*

Failure to comply with BSA/AML obligations can lead to regulatory investigations and proceedings.¹⁰¹ Federal regulatory bodies may impose fines against FIs that fail to rectify BSA/AML deficiencies after being instructed on how to comply.¹⁰² For example, in 2017, the

93. *See id.* at 5–7 (providing a non-exhaustive list of indicators, many of which include a third party attempting to conduct business or otherwise become involved in another customer's financial affairs).

94. *See id.* at 10–11 (instructing FIs to reference the advisory in SAR field 2 and to mark the check for human trafficking in SAR field 38(h) when reporting an incident that the FI believes may be connected to human trafficking).

95. 31 C.F.R. § 1010.311 (2022).

96. *See* 31 C.F.R. § 1010.100(bbb) (2022) (defining transaction as any deposit, withdrawal, exchange, or other transfer of currency).

97. 31 C.F.R. § 1010.311 (2022).

98. *See* § 1010.312 (2022) (requiring FIs to verify and record the name and address of the individual presenting a transaction, and the name, account number, and social security or taxpayer identification number of whomever the transaction is conducted for).

99. 31 C.F.R. § 1010.313 (2022).

100. 31 C.F.R. § 1020.320(a)(2)(ii) (2022); *see also 1st Review, supra* note 10 ("There is a significant degree of overlap between the reported BSA/money laundering violations and other BSA filings, such as currency transaction reports.").

101. *See* MCGUIREWOODS, BANK SECRECY ACT AND ANTI-MONEY LAUNDERING COUNSELING AND DEFENSE, <https://media.mcguirewoods.com/publications/BSA-AML.pdf> [perma.cc/6AGW-KHNT] (last visited Jan. 12, 2023) ("Bank Secrecy Act (BSA)/Anti-Money Laundering (AML) compliance needs and enforcement matters have increased exponentially in recent years, and will only continue to grow in importance as relevant regulators continue to push for stricter rules and broader enforcement authority.").

102. *See* NATIONAL MONEY LAUNDERING RISK ASSESSMENT, *supra* note 43, at 40–43 (detailing the consequences of compliance deficiencies with a variety of case examples to

Office of the Comptroller of the Currency (“OCC”) assessed a \$70 million penalty against Citibank, N.A. for BSA/AML deficiencies that had persisted after being first identified in an agency consent order in 2012.¹⁰³ Citibank was cited for failing to file SARs and for weakness in controls related to correspondent banking.¹⁰⁴ Similarly, in 2021, FinCEN assessed a \$390 million civil money penalty against Capital One for failure to report millions of dollars in suspicious transactions from 2008 to 2014: an act of noncompliance with the BSA.¹⁰⁵

The most severe compliance deficiencies—cases of willful criminality—can result in criminal prosecution.¹⁰⁶ Often, these cases are resolved with deferred prosecution agreements (“DPA”) or non-prosecution agreements (“NPA”).¹⁰⁷ These agreements involve an admission of wrongdoing; fines, penalties, and/or forfeitures; installation of an independent monitor; and a requirement to implement specific remedial actions within a set timeframe.¹⁰⁸ For example, in 2017, Banamex USA (“BUSA”), entered into a NPA for willful failures to maintain an effective AML compliance program and file SARs.¹⁰⁹ BUSA had failed to investigate thousands of alerts in their monitoring system, including ones that indicated suspicious activity connected with human and drug trafficking.¹¹⁰ Some cases do result in entered pleas of guilt.¹¹¹ In 2018, Rabobank pled guilty to conspiracy to defraud the U.S. by obstructing the OCC’s regulation and examination of the

illustrate the significant financial and reputational damage that can come from a FI having a flawed BSA/AML program).

103. Citibank, N.A., AA-EC-2017-71 (Off. of the Comptroller of the Currency Dec. 27, 2017), <https://occ.gov/static/enforcement-actions/ea2017-104.pdf> [perma.cc/8XAA-KD4B].

104. *Id.*; see also NATIONAL MONEY LAUNDERING RISK ASSESSMENT, *supra* note 43, at 41 (summarizing the consent order).

105. Capital One, N.A., AA-EC-2018-62 (Off. of the Comptroller of the Currency Oct. 23, 2018), <https://occ.gov/static/enforcement-actions/ea2018-080.pdf> [perma.cc/DYW3-UAE2].

106. NATIONAL MONEY LAUNDERING RISK ASSESSMENT, *supra* note 43, at 43.

107. *Id.*

108. *Id.*

109. *Banamex USA Agrees to Forfeit \$97 Million in Connection with Bank Secrecy Act Violations*, U.S. DEP’T OF JUST. (May 22, 2017), <https://www.justice.gov/opa/pr/banamex-usa-agrees-forfeit-97-million-connection-bank-secrecy-act-violations> [perma.cc/VVE8-5BAQ].

110. Non-Prosecution Agreement from U.S. Dep’t of Just. to Brad S. Karp and Susanna Buerger (May 18, 2017), <https://www.justice.gov/opa/press-release/file/967871/download> [perma.cc/Q2HA-535M].

111. See NATIONAL MONEY LAUNDERING RISK ASSESSMENT, *supra* note 43, at 44–45 (discussing instances of guilty plea entries).

bank.¹¹² In the plea, Rabobank admitted not only to the deficiency of its BSA/AML program, but to actively seeking to hide those deficiencies from the OCC to avoid regulatory sanctions.¹¹³

Regulatory action is not the only consequence FIs may face for failure to prevent and report signs of human trafficking connected to their accounts; a right to private action also exists in some cases.¹¹⁴ Under the Trafficking Victims Protection Reauthorization Act of 2003 (“TVPA”), victims may bring a civil action against anyone who knowingly benefited from participation in a venture which that person knew (or should have known) has engaged in a violation of the TVPA’s anti-human trafficking laws.¹¹⁵ While the “knowing” mens rea element of the cause of action may be challenging to prove,¹¹⁶ there has been

112. *Rabobank NA Pleads Guilty, Agrees to Pay Over \$360 Million*, U.S. DEP’T OF JUST. (Feb. 7, 2018), <https://www.justice.gov/opa/pr/rabobank-na-pleads-guilty-agrees-pay-over-360-million> [perma.cc/R7YH-R8TQ].

113. *Id.*

114. See Trafficking Victims Protection Reauthorization Act of 2003 § 3, 18 U.S.C. § 1595 (2018) (creating a legal cause of action by which victims may bring lawsuits against those who perpetrated or benefitted from their trafficking).

115. 18 U.S.C. § 1595(a) (2018).

116. See Daniel Michael Criswell, *Mens Rea Reform As A Demand-Side Solution to the Problem of Sex Trafficking*, 51 CASE W. RES. J. INT’L L. 327, 343 (2019), <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=2545&context=jil> [perma.cc/L44R-J6Q5] (“Mens rea is the most important, and often the most difficult, element of a crime to establish.”); Lindsey Roberson & Johanna Le, *The Road to Recovery After Nestlé: Exploring TVPA as a Promising Tool for Corporate Accountability*, COLUM. HUM. RIGHTS L. REV. ONLINE, 1, 17 (Nov. 9, 2021), https://hrlr.law.columbia.edu/hrlr-online/the-road-to-recovery-after-nestle-exploring-tvpa-as-a-promising-tool-for-corporate-accountability/#post-1739-_Toc86829304 [perma.cc/5TM4-3Z6V] (“[D]ue to limited case law, it is not yet clear if the TVPA’s ‘knowingly benefits’ standard actually provides a less complex theory of liability.”); David Bouchard, *What Court Split on Sex Trafficking Means for Hotels, Victims*, LAW360 (June 1, 2020), <https://www.law360.com/articles/1277494/what-court-split-on-sex-trafficking-means-for-hotels-victims> [perma.cc/7XQ3-ZWT2] (observing that courts are split as to whether a plaintiff suing under § 1595(a)’s civil remedy must first show that the defendant violated § 1591(a)’s criminal standard and that in courts where § 1591(a) must be proven it is likely impossible to succeed on a theory of “should have known” liability under § 1595(a)); Tessa Zavislan, *Inhospitable: Third Party Liability for Sex Trafficking in the Hospitality Sector*, 71 AM. U. L. REV. F. 137, 150 (2022), https://aulexreview.org/wp-content/uploads/2022/05/Zavislan.to_Forum_.pdf [perma.cc/FLQ4-KVXJ] (commenting that victim recovery may be limited because § 1595(a) cannot usually be used to hold parent companies and franchisors accountable for the transgressions of their subsidiaries because the law requires knowledge of the specific action to hold an entity liable, and parent companies are generally unaware of specific trafficking ventures occurring in their many branches).

some success among the relatively few numbers of TVPA cases brought against third-party defendants.¹¹⁷

As stated above, FIs have several legal incentives to detect and deter the use of their systems for trafficking enterprises. That said, in practice most federal supervisors prefer to identify and resolve compliance deficiencies “early and privately.”¹¹⁸ While FIs should be aware of the fallout that can occur from noncompliance, most know that so long as they cooperate with early interventions, they can avoid public enforcement actions or criminal prosecution.¹¹⁹

Knowing the consequences of noncompliance, most FIs implement at least some form of BSA/AML programming.¹²⁰ Yet despite these efforts, in 2021 FinCEN identified human trafficking as one of the most significant “illicit finance threats” in the U.S.¹²¹ A U.S.

117. The private right of action is a relatively underutilized, albeit powerful tool. This Note does not focus on the TVPA because of its rare usage against FIs, but mentions it as a reminder that victims can and should have agency in pursuing claims against traffickers and their associates. See KYLEIGH FEEHS & ALYSSA CURRIER, HUM. TRAFFICKING INST., 2019 FEDERAL HUMAN TRAFFICKING REPORT 16 (2019), https://www.traffickinginstitute.org/wp-content/uploads/2022/01/2019-Federal-Human-Trafficking-Report_Low-Res.pdf [perma.cc/HZC3-6MVW] (“Although prosecutors charged only two entity defendants in criminal human trafficking cases in 2019, civil plaintiffs sued 246 entities in federal court More than half (50.8%, 125) of entity defendants in civil suits were hotels.”); see also ALEXANDRA F. LEVY, HUM. TRAFFICKING LEGAL CTR., FEDERAL HUMAN TRAFFICKING CIVIL LITIGATION: 15 YEARS OF THE PRIVATE RIGHT OF ACTION 22 (2018), <https://www.htlegalcenter.org/wp-content/uploads/Federal-Human-Trafficking-Civil-Litigation-1.pdf> [perma.cc/L3LD-7SDU] (“[T]rafficking victims may recover damages not only from their traffickers, but also from third parties who knowingly benefit from the trafficking. This has expanded the range of possible trafficking defendants to include motel owners, doctors, labor recruiters, and others.”); see generally *Doe v. Dabbagh*, No. 15-CV-10724, 2015 WL 13806540 (E.D. Mich. May 28, 2015) (using the TVPA right to successfully sue third-party beneficiaries to recover damages from a psychiatrist who knowingly provided her trafficker with access to medications that the trafficker then used to subdue her).

118. NATIONAL MONEY LAUNDERING RISK ASSESSMENT, *supra* note 43, at 41.

119. *Id.* (“According to the federal banking agencies, the vast majority of BSA/AML compliance deficiencies they identify are resolved through the supervisory process without the need for an enforcement action.”).

120. See Byrne, *supra* note 3 (“Despite the pandemic and economic crises of the last year, financial institutions continue to recognize their unique role in responding to human trafficking.”); see also, e.g., Evan Sparks, *At Super Bowl, U.S. Bank Tackles Human Trafficking*, ABA BANKING J. (Jan. 30, 2019), <https://bankingjournal.aba.com/2019/01/at-super-bowl-u-s-bank-tackles-human-trafficking/> [perma.cc/UW3M-GA6F] (detailing U.S. Bank’s efforts to detect sex trafficking specifically during Super Bowl LII, which resulted in 94 arrests).

121. GAO-22-104807, *supra* note 12; see generally NATIONAL PRIORITIES, *supra* note 62, at 2 (“These threats [including human trafficking] exploit some perceived ‘vulnerability’

Government Accountability Office (“GAO”) study was then ordered to assess current federal efforts to combat trafficking and money laundering and provide recommendations for improvement.¹²² The GAO study found that because the responsibility for combating trafficking through BSA/AML regulation is spread across many federal agencies, a risk for fragmentation of information and duplication of efforts may be hampering FIs’ overall success in combating trafficking.¹²³ Still, the study identified several key federal efforts to combat trafficking and money laundering domestically: FinCEN advisories for reporting standards, interagency collaboration, and FinCEN information-sharing programs between FIs and law enforcement, and across FIs.¹²⁴ This Note will examine each in turn.

IV. EVALUATION OF THE CURRENT METHODS FIs USE TO ADDRESS THE LEGAL OBLIGATION TO COMBAT HUMAN TRAFFICKING

A. *FinCEN Data Analysis, Advisories, and Information-Sharing Programs*

FinCEN’s analysts have access to FI-filed reports, like SARs and CTRs, and use them to analyze trends and connect with law enforcement.¹²⁵ Using FinCEN’s current report databases, Intelligence Research Specialists at FinCEN “link[] together these various pieces of information related to financial crime, and then prepare[] reports which are used by law enforcement to support investigations.”¹²⁶ Similarly, Financial Transaction Analysts at FinCEN share information collected in SARs, CTRs, and other financial reports with interested parties,

in the U.S. financial system that may be in law, regulation, supervision, or enforcement, or may stem from a unique attribute of a product, service, or jurisdiction.”).

122. GAO-22-104807, *supra* note 12, at HIGHLIGHTS.

123. *Id.* at 29.

124. *Id.* at 36–38.

125. *See 1st Review*, *supra* note 10 (“As part of its support to law enforcement investigations, FinCEN analysts use a variety of data sources, including BSA filings, to link together various elements of a crime, essentially helping investigators find the missing pieces of the criminal puzzle.”).

126. *See Core Career Descriptions*, FIN. CRIMES ENF’T NETWORK [hereinafter *Core Career Descriptions*], <https://www.fincen.gov/careers/core-career-descriptions> [perma.cc/S6AY-T2GM] (last visited Jan. 15, 2023) (providing job descriptions for FinCEN analysts).

including law enforcement and FIs, to improve detection and prosecution outcomes.¹²⁷

One of FinCEN's key efforts to combat human trafficking in finance is the publication of advisories to instruct FIs on how best to implement BSA/AML programs and improve SAR data.¹²⁸ Advisories serve a dual purpose of (1) reminding FIs of their obligations and (2) keeping FIs abreast of new detection strategies as trafficking methods evolve.¹²⁹ Advisories may be shared with FIs' chief officers, BSA/AML departments, legal departments, cyber security departments, and customer-facing staff.¹³⁰

FinCEN also coordinates several information-sharing programs.¹³¹ Some programs are between FinCEN and law enforcement agencies to share information about improving identification and reporting for financial crimes, and not all FIs are privy to all information sharing initiatives.¹³² A public-private program called FinCEN Exchange provides a forum for law enforcement agencies to request specific information and report new typologies for improving BSA/AML compliance.¹³³ Following Section 314(b) of the PATRIOT Act,¹³⁴ FinCEN also conducts a voluntary program for FIs to

127. *Id.*

128. See GAO-22-104807, *supra* note 12, at 36 (describing the FinCEN advisories to improve the quality of SAR data received from FIs by bettering FIs' understanding of what activities to flag and report).

129. See FIN-2020-A008, *supra* note 71, at 1–2 (stating that advisories provide regulatory compliance tips, indicators of trafficking, and best practices); *Alerts/Advisories/Notices/Bulletins/Fact Sheets*, FIN. CRIMES ENF'T NETWORK, <https://www.fincen.gov/resources/advisoriesbulletinsfact-sheets> [perma.cc/TP62-952Z] (last visited Jan. 23, 2022) (stating that advisories “enabl[e] financial institutions to guard against such threats” by providing “illicit activity typologies, red flags that facilitate monitoring, and guidance on complying with FinCEN regulations to address those threats and vulnerabilities.”).

130. FIN-2020-A008, *supra* note 71, at 1.

131. See, e.g., GAO-22-104807, *supra* note 12, at 37–39 (describing information sharing programs between FIs and federal agencies as well as between FIs).

132. See *id.* at 37 (“FinCEN and law enforcement agencies have programs to share details about how financial institutions could better identify and report data for disrupting money laundering, terrorist financing, and other financial crimes, although the information generally is shared among limited audiences.”).

133. See 31 U.S.C. § 310(d) (2018) (establishing the FinCEN Exchange); see also *FinCEN Exchange*, FIN. CRIMES EN'T NETWORK, <https://www.fincen.gov/resources/financial-crime-enforcement-network-exchange> [perma.cc/NW6B-RP4F] (last visited Jan. 15, 2022) (explaining how FinCEN Exchange connects law enforcement and FIs to communicate about suspicious activity).

134. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Pub. L. 107–56, §

share information amongst themselves about their BSA/AML compliance work.¹³⁵ While the information in these programs would normally be privacy protected, where a FI suspects money laundering or terrorist financing, the FI is granted a safe harbor to share that information with other FIs in the 314(b) program.¹³⁶

B. *Interagency Collaborations*

One of the ways regulatory agencies seek to minimize fragmentation and duplication in combating human trafficking is through inter-agency task forces and other collaborative schemes.¹³⁷ The task force model is most commonly used to collaborate on large, complex cases.¹³⁸ The U.S. Department of the Treasury is involved in multi-agency efforts when it is necessary to “leverage[] the Department’s economic and anti-money laundering tools . . . [and] engage[] with [FIs]” to fight human trafficking in the financial sector.¹³⁹ Similarly, the Internal Revenue Service-Criminal Investigation Office (“IRS”) heads task forces to review SARs and coordinate follow-up investigations.¹⁴⁰ While these cooperative arrangements have found

314(b), 31 U.S.C. § 5311 note (2004) (Cooperative Efforts to Deter Money Laundering); *see* 31 C.F.R. 103.100, 110 (2022) (implementing 314(b)).

135. *See* Fin. Crimes Enf’t Network, *Section 314(b) Fact Sheet* (December 2020) [hereinafter *FinCEN, 314(b)*], <https://www.fincen.gov/sites/default/files/shared/314bfactsheet.pdf> [perma.cc/9RXXF-CL2G] (detailing what information and institutions are allowed to be shared between FIs under the “safe harbor” of Section 314(b)).

136. *See* 31 C.F.R. § 1010.540 (2022) (allowing for voluntary information sharing between FIs under certain parameters); *id.* (detailing what information and institutions can share between FIs under the “safe harbor” of Section 314(b)); *see also infra* notes 201–203 and accompanying text.

137. *See, e.g.,* GAO-22-104807, *supra* note 12, at 29 (“To address counter-trafficking challenges, federal agencies use interagency task forces and other mechanisms to share information on and coordinate their efforts to identify and combat trafficking activities.”).

138. *See id.* (“Through these collaborative efforts, agencies share information and analytical resources related to ongoing investigative or other countertrafficking efforts. According to FATF, the task force model is useful for conducting sophisticated, large, and complex cases, and allows law enforcement agencies to leverage other resources.”).

139. *Agencies of the President’s Interagency Task Force to Monitor and Combat Trafficking in Persons*, U.S. DEP’T OF STATE, <https://www.state.gov/agencies-of-the-presidents-interagency-task-force-to-monitor-and-combat-trafficking-in-persons/> [perma.cc/NV4P-6G54] (last visited Jan. 15, 2023).

140. *See, e.g.,* MAURICE CLARK, INTERNAL REVENUE SERV., SAR REVIEW PROGRAM: A NATIONAL PERSPECTIVE (July 27, 2010),

some success, they are not without their flaws.¹⁴¹ Joining agencies on a task force does not guarantee that the parties' priorities will coalesce, and conflicting preferences for timing and information gathering can lead to stalemates in justice.¹⁴²

Following its statutory requirements, FinCEN plays an active role in connecting FIs with larger agencies, particularly those focused on law enforcement.¹⁴³ FinCEN deals directly with agencies such as the IRS to make SARs' data available to law enforcement officers and assist in investigations.¹⁴⁴ In turn, law enforcement agencies communicate back to FinCEN about what kinds of information are most helpful.¹⁴⁵ FinCEN and interested agencies also swap liaisons to troubleshoot information-sharing tactics and make recommendations.¹⁴⁶ However, on multiple occasions personnel with insufficient experience

<https://www.ice.gov/doclib/aml/pdf/2010/clark.pdf> [perma.cc/4JQX-UHDN] (giving an overview of IRS-led SARS taskforces).

141. See GAO-22-104807, *supra* note 12, at 31–32 (“However, there can be challenges with these arrangements as a result of differing missions, priorities, and cultures among the task force and its members.”).

142. See *id.* at 32 (“For example, agencies' priorities may differ with respect to the timing of counter-trafficking actions—with one agency preferring to intervene more quickly to disrupt a drug trafficking operation and another preferring to wait and gather additional intelligence that may yield more substantial future outcomes.”).

143. See, e.g., Annunzio–Wylie Anti-Money Laundering Act § 1564, 31 U.S.C. § 5311 note (1992) (Advisory Group on Reporting Requirements) (establishing a BSA Advisory Group to receive feedback on how to improve BSA programs and informs FIs about how BSA reporting assists in law enforcement investigations); William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 § 6104, 31 U.S.C.A § 5311 note (2021) (Interagency Anti-Money Laundering and Countering the Financing of Terrorism Personnel Rotation Program) (requiring a personnel rotation program between FinCEN and the Department of Justice, Federal Bureau of Investigation, Department of Homeland Security, Department of Defense, and any other agencies deemed appropriate).

144. See *1st Review*, *supra* note 10 (“FinCEN is designated as the single filing point for suspicious activity reports and is responsible for distributing the information within the government.”).

145. See 31 U.S.C. § 5311 note (Advisory Group on Reporting Requirements) (creating the BSA Advisory Group as a standing organization of law enforcement agencies to give feedback on how BSA reporting requirements could be enhanced to better assist investigations and prosecutions of finance-connected crimes, and how FIs can improve their reporting efforts beyond mere compliance with the law).

146. See 31 U.S.C. § 5311 note (Interagency Anti-Money Laundering and Countering the Financing of Terrorism Personnel Rotation Program) (requiring FinCEN to implement a personnel rotation program with federal law enforcement and other agencies who work on anti-money laundering initiatives).

or qualifications were sent to the partner agencies, which lowered the effectiveness of the liaison program.¹⁴⁷

C. *Evaluation of Current Methods*

Both the Trump¹⁴⁸ and Biden¹⁴⁹ administrations designated human trafficking as a national priority and tasked numerous regulating bodies to instruct and oversee FIs' anti-human trafficking efforts. Yet recent statistics indicate that the problem is not dissipating, with the reported number of trafficking situations on the U.S. National Human Trafficking Hotline remaining almost identical from 2020 to 2021.¹⁵⁰ The adage "quantity does not equal quality" appears to be true: all these

147. See DEP'T OF JUSTICE, OFF. OF THE INSPECTOR GENERAL, I-2014-002, REVIEW OF THE ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCES FUSION CENTER 30 (Mar. 2014), <https://oig.justice.gov/reports/2014/e1402.pdf> [perma.cc/WW4U-C8LW] (finding that some personnel sent to its task force by other agencies lacked necessary experience or qualifications).

148. See *Combating Human Trafficking*, U.S. DEP'T OF THE TREASURY, (Jan. 29, 2020), <https://home.treasury.gov/news/featured-stories/combating-human-trafficking> [perma.cc/M7HA-W4FD] (identifying OIA, FinCEN, OFAC, and the IRS as agencies using financial data to combat human trafficking); see also *The Trump Administration is Committed to Combating Human Trafficking and Protecting the Innocent*, THE WHITE HOUSE (Oct. 20, 2020), <https://trumpwhitehouse.archives.gov/briefings-statements/trump-administration-committed-combating-human-trafficking-protecting-innocent/> [perma.cc/LS6P-KC3L] (detailing a "whole-government" approach to combating human trafficking, including the introduction of a National Action Plan to Combat Human Trafficking).

149. See *Fact Sheet: The National Action Plan to Combat Human Trafficking (NAP)*, THE WHITE HOUSE (Dec. 3, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/03/fact-sheet-the-national-action-plan-to-combat-human-trafficking-nap/> [perma.cc/W89J-CFPL] ("The National Action Plan to Combat Human Trafficking is grounded in an integrated federal response to human trafficking. It emphasizes the importance of collaboration across government when investing resources in anti-trafficking policies and programs."); see also *Human Trafficking Prevention*, U.S. DRUG ENF'T ADMIN., <https://www.dea.gov/human-trafficking-prevention> [perma.cc/LCL4-2R99] (last visited Jan. 15, 2023) ("On December 31, 2021, President Biden signed a proclamation declaring January 2022 as National Human Trafficking Prevention Month, a time to raise awareness and educate all members of society on how they can prevent and respond to human trafficking.").

150. Compare POLARIS, POLARIS ANALYSIS OF 2020 DATA FROM THE NATIONAL HUMAN TRAFFICKING HOTLINE 1–2 (2021), <https://polarisproject.org/wp-content/uploads/2022/01/Polaris-Analysis-of-2020-Data-from-the-National-Human-Trafficking-Hotline.pdf> [perma.cc/3ZHP-DZCG] (reporting 10,583 total trafficking situations and 16,658 total likely victims in 2020), with POLARIS, POLARIS ANALYSIS OF 2021 DATA FROM THE NATIONAL HUMAN TRAFFICKING HOTLINE 1 (2022), <https://polarisproject.org/wp-content/uploads/2020/07/Polaris-Analysis-of-2021-Data-from-the-National-Human-Trafficking-Hotline.pdf> [perma.cc/X2TE-V498] (reporting 10,359 total trafficking situations and 16,554 total likely victims in 2021).

competing advisories and programs may be creating more white noise than meaningful direction for collective and effective anti-human trafficking work in the financial sector.¹⁵¹

One challenge to seeing actual improvements in anti-human trafficking efforts is the threat of cosmetic compliance—FIs formally meeting BSA/AML requirements without doing anything substantively to avoid human trafficking practices.¹⁵² Take for example Deutsche Bank, a noted member of the Thomson Reuters U.S. Bank Alliance, a multi-industry coalition founded to help financial institutions address human trafficking.¹⁵³ Notwithstanding Deutsche Bank’s participation in the anti-human trafficking coalition, in 2020 the New York State Department of Financial Services (“NYDFS”) levied a \$150 million fine against Deutsche Bank for BSA/AML failures related to its client Jeffery Epstein and his financial activity connected to sex trafficking.¹⁵⁴ In rendering the fine, the NYDFS found that Deutsche Bank had “conducted business in an unsafe and unsound manner,” and “failed to maintain an effective and compliant anti-money laundering program.”¹⁵⁵ Giving lip service to anti-human trafficking work while engaging a multimillion-dollar account connected with a known perpetrator of sex trafficking is the epitome of the hypocrisy cosmetic compliance critiques capture.¹⁵⁶ However, as regulators have increased pressure on FIs to follow BSA/AML guidelines, the overall threat of cosmetic compliance may dissipate in 2023.¹⁵⁷

151. See Landau, *supra* note 5, at 237 (finding that guidelines and similarly flexible forms of promulgating human rights laws may “risk hindering rather than helping compliance”).

152. See Szymeczek, *supra* note 38, at 1152 (discussing the concern that disclosure laws only elicit “‘cosmetic compliance’ by formally meeting the requirements for a reputational gain, without actually doing anything substantively to avoid utilizing human trafficking practices”).

153. THOMSON REUTERS FOUND., THOMSON REUTERS FOUNDATION LAUNCHES RESOURCE TO HELP FINANCIAL INSTITUTIONS TACKLE HUMAN TRAFFICKING (July 19, 2018), <https://www.trust.org/contentAsset/raw-data/019d7cc8-df11-42e7-b7a8-0fe2f5f5f102/document> [perma.cc/KU3J-7GC7].

154. Deutsche Bank AG, 2020 WL 5760253, at *8, *19 (N.Y. Dep’t of Fin. Serv.’s July 6, 2020).

155. *Id.* at *19.

156. See Szymeczek, *supra* note 38, at 1152 (explaining that cosmetic compliance risks perfunctory meeting of requirements without making real efforts to avoid human trafficking).

157. See Ian Henderson, *Lessons from The Seven Largest AML Bank Fines In 2021*, FORBES (May 24, 2022, 6:00AM), <https://www.forbes.com/sites/forbestechcouncil/2022/03/24/lessons-from-the-seven-largest->

Considering that the BSA/AML programs that FIs must adopt are “risk-based,”¹⁵⁸ there is a high degree of variability in compliance approaches.¹⁵⁹ While this allows for some necessary flexibility to “preserve access for legitimate users while preventing criminal abuse of the system,” it also leads to a near-total lack of uniformity across compliance programming.¹⁶⁰ Indeed, much of the guidance surrounding anti-human trafficking in FIs is left to the work of “advisories” and “best practice” bulletins, published by a variety of sources.¹⁶¹ With ambiguous instructions to implement BSA/AML programs, FIs are left with discretion to interpret their due diligence duty.¹⁶² This ambiguity may leave FIs vulnerable to unperceived gaps in compliance that allow undetected human trafficking, and result in FIs inadvertently holding criminally-associated accounts.¹⁶³ Furthermore, a lack of consistency in standards across FIs creates a roadblock against efficient communication between FIs and from FIs to law enforcement.¹⁶⁴ Savvy

aml-bank-fines-in-2021/?sh=585b99668ced [perma.cc/LQN7-K3TY] (“[FIs] are coming under increased pressure to stop illegal flows, so . . . compliance teams need to adopt every relevant technology . . . to prepare themselves and prevent their organization from being used by criminals to launder dirty money—or else they’ll pay the price for it.”).

158. 31 C.F.R. § 1010 (2022). Each federal bank regulator will have these regulations. See 12 C.F.R. § 21.21 (2022) (codifying the regulation for national banks that are overseen by the Office of the Comptroller of the Currency), § 208.63 (2022) (codifying the regulation for state-chartered banks that are members of the Federal Reserve System), § 326(B) (2022) (codifying the regulation for state banks that are overseen by the Federal Deposit Insurance Corporation).

159. See OFF. TO MONITOR & COMBAT TRAFFICKING IN PERSONS, *supra* note 32, at 5 (stating that in adopting a “risk-based approach . . . [FIs] should assess their potential exposure to the risk of handling the proceeds of human trafficking as they engage with their clients, and, as appropriate, implement a mitigation process in line with the risk.”).

160. *Id.*

161. See generally Byrne, *supra* note 3 (recommending best practices financial institutions should follow to ensure BSA/AML compliance and best outcomes in combating human trafficking); FIN-2020-A008, *supra* note 71, at 1 (introducing FinCEN’s supplemental advisory to direct financial institutions in their AML programs to detect human trafficking).

162. See Landau, *supra* note 5, at 237 (“There is a real risk of inconsistency and ‘mixed messages’, which may undermine the potential for guidance to clarify standards.”).

163. See Christopher Wilkes, *A Case for Reforming the Anti-Money Laundering Regulatory Regime: How Financial Institutions’ Criminal Reporting Duties Have Created an Unfunded Private Police Force*, 95 IND. L. J. 649, 670 (2020) (“Given the ambiguity, complexity, and perhaps subjectivity in the criteria for what should be considered possibly “suspicious” in the context of money laundering and financial crimes, the SAR rule renders financial institutions liable for exercising poor judgment . . . about the type of customer conduct that is valuable to law enforcement agencies.”).

164. See OFF. OF INSPECTOR GEN., OIG-17-055, TERRORIST FINANCING/MONEY LAUNDERING: FINCEN’S 314 INFORMATION SHARING PROGRAMS ARE USEFUL BUT NEED

financial criminals often spread their behaviors across several FIs to prevent detection, knowing that each entity will follow institution-specific procedures which therefore increase a criminal's chance of evading notice.¹⁶⁵

For example, the 2021 GAO Study found that while FIs use the FinCEN Advisories to inform their anti-human trafficking efforts, some institutions found the advisories inadequate.¹⁶⁶ These FIs complained that providing typologies of trafficking did not do enough to help them see the “larger picture” needed to flag suspicious activity as indicative of human trafficking specifically.¹⁶⁷ FIs subsequently requested increased information sharing between law enforcement agencies and FIs, to gain greater insight into what human trafficking looked like within their specific markets.¹⁶⁸ Other FIs also noted it would be helpful to have more targeted case studies from which to model their efforts based on industry type or geographic location.¹⁶⁹ Several FIs reported that interacting with and asking questions of law enforcement agents “improve[d] their ability to identify and report suspicious activities.”¹⁷⁰

FIs want to be more equipped to combat human trafficking through greater partnerships with law enforcement and each other, but currently lack the tools needed to make such relationships thrive.¹⁷¹ In 2019, the GAO reported that law enforcement agencies did not provide

FINCEN'S ATTENTION, 14–17 (2017) (noting inconsistent understanding of the 314(b) voluntary information sharing program).

165. See FIN. ACTION TASK FORCE, PARTNERING IN THE FIGHT AGAINST FINANCIAL CRIME: DATA PROTECTION, TECHNOLOGY AND PRIVATE SECTOR INFORMATION SHARING, 66 (2022), <https://www.fatf-gafi.org/media/fatf/documents/Partnering-int-the-fight-against-financial-crime.pdf> [perma.cc/3KVL-F3LX] (“A single financial institution has only a partial view of transactions and sees one small piece of what is often a large, complex puzzle. Criminals exploit this information gap by using multiple financial institutions within or across jurisdictions to layer their illicit financial flows.”).

166. See GAO-22-104807, *supra* note 12, at 37 (“[S]ome [FI representatives interviewed] said the information FinCEN provided was very broad and that more detailed information (such as case studies) would enhance financial institutions’ ability to identify or report information useful for law enforcement investigations.”).

167. See *id.* (“For example, some institutions noted they only see a small piece of an illicit finance scheme and could improve their reporting if they better understood the larger picture.”).

168. *Id.*

169. *Id.*

170. *Id.* at 38.

171. See GAO-22-104807, *supra* note 12, at 37 (describing FI representatives’ requests for stronger communication with law enforcement on trafficking concerns).

institution-specific feedback on a regular or large-scale basis and that FI representatives said that having more specific guidance would be helpful.¹⁷² The GAO, therefore, recommended that FinCEN establish a mechanism for law enforcement agencies to provide this feedback to FIs.¹⁷³ Yet as of the 2021 GAO Study, FinCEN had not addressed this recommendation or begun work on such a mechanism, despite the new report's reflection that FIs still believe they would benefit from such a resource.¹⁷⁴

Furthermore, FIs appear to find the voluntary 314(b) information-sharing program facilitated by FinCEN beneficial but similarly lacking clear expectations and standards for what information can be shared and how long the process should take.¹⁷⁵ Some FIs have taken it upon themselves to encourage their peer institutions to participate in the program, noting that traffickers exploit all segments of the financial system, so all FIs must be involved in dismantling such criminal pursuits.¹⁷⁶ There is concern that increasing requirements in the voluntary program might dissuade such participation; however, rather than interpreting this as a reason to leave gaps in the program, perhaps this is a sign that engagement should become mandatory.¹⁷⁷

172. See U.S. GOV'T ACCOUNTABILITY OFF., GAO-19-582, BANK SECRECY ACT: AGENCIES AND FINANCIAL INSTITUTIONS SHARE INFORMATION BUT METRICS AND FEEDBACK NOT REGULARLY PROVIDED, 56, 58, 61 (Aug. 2019), <https://www.gao.gov/assets/gao-19-582.pdf> [perma.cc/2V64-R8DJ] (reporting that FIs would like more "specific guidance" from FinCEN on improving BSA/AML programs and that programs like FinCEN Exchange were larger in scale and more inclusive to FIs of all kinds).

173. See *id.* at 63 (recommending FinCEN review options to "more consistently and publicly provide summary data on the usefulness of BSA reporting" and "review options for establishing a mechanism through which law enforcement agencies may provide regular and institution-specific feedback on BSA reporting").

174. See GAO-22-104807, *supra* note 12, at 37, n.95 (reporting that while FinCEN agreed with the 2019 recommendation to review options for providing more summary data on BSA reporting usefulness, it did not take a position on the GAO's recommendation to establish a mechanism for more consistent, FI-specific law-enforcement feedback, and as of November 2021 FinCEN had not fully implemented either recommendation).

175. See *id.* at 39 ("The financial institutions noted that information sharing through the [314(b)] program could be improved if there were clearer expectations and standards around response times for requests from other institutions or around what information can be shared.").

176. See *id.* at 40 ("[F]inancial industry representatives told us they launched an initiative to develop recommended practices and sample procedures to encourage greater participation in the 314(b) program. This effort was an outgrowth of the BSA Advisory Group working group and was ongoing as of October 2021.").

177. See *id.* at 39–40 (reporting that some FIs were concerned that "imposing additional requirements might discourage institutions from participating in the voluntary program").

Having established the need for a comprehensive, inclusive, cross-industry information-sharing platform, the formation and implementation considerations for such a mechanism will now be addressed.

V. RECOMMENDATION

The international community recognizes four key principles of a successful domestic anti-human trafficking framework: “coherence, consistency, transparency, and accountability.”¹⁷⁸ A mandatory, comprehensive platform for FIs and enforcement bodies to collaborate¹⁷⁹ in anti-human trafficking work aligns with these goals. As the body already responsible for a substantial portion of BSA/AML compliance work, FinCEN is likely best situated to pilot such a program.¹⁸⁰ Building off FinCEN Exchange and the Section 314(b) program, FinCEN is well-positioned to gather the necessary data to develop a program, execute a plan, and carry out its eventual growth into a nationwide mechanism that engages most FIs and enforcement agencies in a unified front against human trafficking.¹⁸¹

178. Jason Haynes, *The Modern Slavery Act (2015): A Legislative Commentary*, 37 STATUTE L. REV. 33, 45 (2016), <https://academic.oup.com/slr/article/37/1/33/2362898> [perma.cc/A3B9-LEZ6].

179. See *History of Anti-Money Laundering Laws*, FIN. CRIMES ENF'T NETWORK, <https://www.fincen.gov/history-anti-money-laundering-laws> [perma.cc/QHY2-T2WL] (last visited Dec. 19, 2022) (explaining that FinCEN's mission is to “safeguard the financial system from the abuses of financial crime” of all kinds by implementing AML/BSA programs). While this note's focus is on human trafficking, all data collecting and networking FinCEN facilitates is used to address a wide swath of potential criminal activity. Thus, developing the platform described in this note could be efficient for improvising BSA/AML compliance generally, as the platform could be used to detect a wide variety of finance-connected crimes, not just human trafficking.

180. See LIANA W. ROSEN & RENA S. MILLER, CONG. RSCH. SERV., R47255, THE FINANCIAL CRIMES ENFORCEMENT NETWORK (FINCEN): ANTI-MONEY LAUNDERING ACT OF 2020 IMPLEMENTATION AND BEYOND 1 (2022), <https://crsreports.congress.gov/product/pdf/R/R47255> [perma.cc/8Y2X-CK9R] (describing FinCEN as “[t]he primary federal agency responsible for implementing the majority of [AML] provisions.”).

181. See FIN. ACTION TASK FORCE, *supra* note 165, at 65 (detailing the achievements of FinCEN Exchange and Section 314(b) private-private information sharing).

A. *Practical Concerns: Can the Platform Be Mandatory?*

Establishing a mandatory network would require amending existing legislation. Firstly, the BSA may need to be amended to require participation in the program regardless of FIs' other "risk-based" program development procedures.¹⁸² Without specifying in the BSA that the flexibility to create individualized procedures cannot preclude engagement with the overarching network recommended here, reluctant FIs might unfairly rely on malleable risk-based analytics to find loopholes out of program engagement.¹⁸³ Secondly, Section 314(b) of the PATRIOT Act,¹⁸⁴ the foundational law for FinCEN's currently voluntary FI-to-FI information-sharing network,¹⁸⁵ would likely require an amendment to change the language from "financial institutions *may* share information with one another" to "financial institutions *must* share information with one another."¹⁸⁶

However, the U.S. would not be alone in shifting to a mandatory public-private information-sharing initiative in BSA/AML compliance. In 2021, the Monetary Authority of Singapore ("MAS") introduced a digital platform for FIs to share information on customers and

182. See 31 C.F.R. § 1010.610 (2022) (setting forth the requirement for certain financial institutions to establish and apply a due diligence program that includes risk-based policies and procedures for the FI to detect and report suspicious activity); see also OFF. OF THE COMPTROLLER OF THE CURRENCY, OCC BULLETIN, BANK SECRECY ACT/ANTI-MONEY LAUNDERING: JOINT STATEMENT ON THE RISK-BASED APPROACH TO ASSESSING CUSTOMER RELATIONSHIPS AND CONDUCTING CUSTOMER DUE DILIGENCE (2022), <https://www.occ.treas.gov/news-issuances/bulletins/2022/bulletin-2022-18.html> [perma.cc/KTP3-UGRU] (reminding FIs to adopt "appropriate risk-based procedures" while also indicating that "no customer type presents a single level of uniform risk or a particular risk profile related to . . . illicit financial activity.").

183. See GAO-22-104807, *supra* note 12, at 39–40 (interviewing numerous FI representatives and finding varying understanding of FinCEN and the 314(b) program).

184. 31 U.S.C. § 5311 (2018).

185. Section 314(b), FIN. CRIMES ENF'T NETWORK, <https://www.fincen.gov/section-314b> [perma.cc/Y5KP-BPM6].

186. Courts interpret *may* as permissive, and *must* as mandatory, while *shall* can be interpreted as permissive or mandatory in different courts and contexts. See *Shall and Must*, PLAIN LANGUAGE ACTION & INFO. NETWORK, <https://www.plainlanguage.gov/guidelines/conversational/shall-and-must/> [perma.cc/5PDY-4S4S] (last visited Oct. 17, 2022) (discussing the meaning of *shall* and *must* and how to use the terms in legal writing); see also Deborah Hopkins, *Shall, Will, May, or Must?*, FED. EMP L. TRAINING GRP. (Jan. 17, 2018), <https://feltg.com/shall-will-may-or-must/> [perma.cc/W5U6-PLVJ] (recommending the use of *must* over the more ambiguous construction alternatives *shall*, *will*, and *may*).

transactions related to money laundering and other financial crimes.¹⁸⁷ The platform, called the Collaborative Sharing of ML/TF Information & Cases (“COSMIC”), enables FIs to securely share information that crosses a pre-set threshold of risk.¹⁸⁸ COSMIC integrates information sharing and data analytics tools, and MAS hopes that having all participating FIs operating with the same information and analytic framework will improve collaboration to tackle criminal investigations.¹⁸⁹

When COSMIC launches in 2023, only six of the major banks in Singapore will participate, but MAS plans to expand the program to capture more FIs in the future.¹⁹⁰ Eventually, MAS will require all FIs participating in COSMIC to frequently report and seek information on their risky customers, with the amount of communication depending on the level of risk associated with the customer.¹⁹¹ MAS believes that making the FI-to-FI information-sharing component of COSMIC mandatory will be vital to “reali[z]e effective detection outcomes.”¹⁹² The U.S. should monitor the progress of the COSMIC platform in Singapore and consider establishing a similar mechanism to improve anti-human trafficking programs in its financial sector by standardizing data analytics and proliferating information sharing across FIs.

Recognizing the difficulty of amending legislation, this Note recommends in the alternative that the same efforts go towards developing a multi-stakeholder information-sharing platform that is voluntary, but highly encouraged. Following the recommendations of the 2021 GAO Study, FinCEN should analyze its current information-sharing programs, including FinCEN Exchange and the 314(b) voluntary program, and determine what components may be combined

187. Media Release, Monetary Auth. Sing., MAS and Financial Industry to Use New Digital Platform to Fight Money Laundering ¶ 1 (Oct. 1, 2021), <https://www.mas.gov.sg/news/media-releases/2021/mas-and-financial-industry-to-use-new-digital-platform-to-fight-money-laundering> [perma.cc/PFH8-JYGG].

188. *Id.* ¶ 3.

189. *Id.* ¶ 5.

190. *Id.* ¶ 6.

191. See MONETARY AUTH. SING., CONSULTATION PAPER ON FI-FI INFORMATION SHARING PLATFORM FOR AML/CFT 9–12 (2021), <https://www.mas.gov.sg/-/media/MAS/News-and-Publications/Consultation-Papers/1-Oct-2021-FI-FI-Information-Sharing-Platform-for-AMLCFT/Consultation-Paper-on-FI-FI-Information-Sharing-for-AMLCFT.pdf> [perma.cc/B56T-2RVY] (describing the initial requirements of COSMIC and how the Monetary Authority of Singapore plans to phase the requirements from voluntary to mandatory as the program expands to more FIs).

192. *Id.* at 6.

and transformed into a cohesive, inclusive information network.¹⁹³ One possibility could be to expand the existing 314(b) program. Currently, the 314(b) program only facilitates FI-to-FI information sharing,¹⁹⁴ but FinCEN could increase the platform's efficiency by adding a layer of law enforcement communication directly into the system. By making a multi-stakeholder, public-private platform, data analytics could process information input by FIs and law enforcement and help detect patterns and problems at a faster rate than the current system allows.¹⁹⁵

Broadening the participant pool of a platform, like the 314(b) program, to capture both public and private entities would not have to mean that all participants be allowed access to all stored information. Rather, by programming the database to facilitate connections only on a need-to-know basis, with already accumulated evidence establishing the springboard for data sharing and cooperation between parties, FIs and law enforcement could spend less time in their own data analysis and more time on combating crimes like human trafficking.¹⁹⁶ Such a system would also not preclude the option for FIs and law enforcement to make contact outside of a system-generated connection; when either entity had reasonable suspicion and a desire to file a report, the old methods could still be employed. By improving the efficiency of existing programs, FinCEN could achieve greater FI confidence in contributing to a voluntary network, which would lead to more successful detection and prosecution of human trafficking and other finance-related crimes.¹⁹⁷

B. *Practical Concerns: Data Protection and Privacy*

Information sharing between FIs can produce a wide variety of beneficial outcomes in the fight against human trafficking and other

193. See GAO-22-104807, *supra* note 12, at 37, n.95 (“[GAO] recommended that FinCEN (1) review options to more consistently and publicly provide summary data on the usefulness of BSA reporting and (2) review options for establishing a mechanism for law enforcement agencies to provide regular and institution-specific feedback on BSA reporting.”).

194. See *supra* notes 134–136 and accompanying text.

195. See *infra* text accompanying notes 204–212.

196. The EuroDat-Atos partnership is one model of how this note's proposed program could be developed to encrypt data and make it available to users only on a need-to-know-basis. See *infra* text accompanying notes 204–212.

197. See *supra* Part IV.C.

financial crimes.¹⁹⁸ At the same time, any instance of information sharing raises data protection and privacy (“DPP”) concerns.¹⁹⁹ Platform development must therefore carefully follow existing DPP laws, and would be well advised to ensure that all elements are necessary, reasonable, and proportionate to the purpose of combating financial crime.²⁰⁰

Mindful of the need for customer protection, the 314(b) provisions of the PATRIOT Act do not violate DPP laws, but instead, create a safe harbor for information sharing necessary for crime detection.²⁰¹ Section 314(b) carves out an exception for FIs subject to BSA/AML program requirements to share customer information in order to identify possible terrorist activity or money laundering.²⁰² To ensure DPP concerns are not forgotten, a FI must have a “reasonable basis to believe the information shared relates to . . . money laundering or terrorist activity” before it can share the information under Section 314(b)’s protection.²⁰³ Efforts to expand and improve this system must keep this DPP safeguard to mitigate the risk of inappropriate information sharing while elevating the likelihood of crime detection.

The EuroDaT international data trustee project provides a helpful model should the U.S. adopt this Note’s recommendations and improve FI-to-FI and FI-to-law enforcement communication through a

198. See FIN. ACTION TASK FORCE, *supra* note 165, at 11 (listing benefits of private-private information sharing: customer identification and verification, transaction monitoring, sanctions and other screening, risk management, identification of beneficial owner, identification of crime typologies, intelligence driven inquiries).

199. See *id.* at 3 (“[T]he collection and use of personal data for these purposes can trigger data protection and privacy concerns.”).

200. See *id.* (“Where the [law] requires, it is important that the initiatives are necessary, reasonable and proportionate in relation to the purposes of processing (i.e., AML/CFT/CPF). Initiatives need to be designed and implemented responsibly and effectively so that the risks associated with increased sharing of personal data are appropriately taken into account.”); see generally Gramm-Leach-Bliley Act, §§ 510–509, 521–527, 15 U.S.C. §§ 6801–6809, 6821–6827 (2004) (requiring controlling agencies to establish appropriate standards for safeguards that will ensure security and confidentiality of customer information, protect against threats to the integrity of that information, and protect against unauthorized access of that information which could result in “substantial harm or inconvenience” to a customer).

201. See *supra* notes 134–136 and accompanying text.

202. See FinCEN, *314(b)*, *supra* note 135, at 4–5 (detailing what institutions and information is allowed to be shared between FIs under the “safe harbor” of the Section 314(b) provision).

203. *Id.* at 3, 5–6.

centralized data-sharing platform.²⁰⁴ As a data trustee, EuroDaT collects data from parties as part of a contracted service to hold, evaluate, and distribute the data to other interested parties in a safe, protected, and controlled manner.²⁰⁵ Each party inputs encrypted raw data into EuroDaT, which then decrypts the data in a protected area, filters the data for the evaluation purpose contracted for, and shares the relevant data points with other participants.²⁰⁶ This method provides protection against corruption and data abuse, as at no point in the process does any party, including EuroDaT, have direct access to the entire unencrypted data set.²⁰⁷ The EuroDaT data trustee project is still in early development stages, so the U.S. should monitor its progress as reported by the EuroDaT consortium.²⁰⁸

Specifically, Atos, a European cybersecurity company,²⁰⁹ is currently attempting to use EuroDaT to develop a federated ecosystem to combat financial crime.²¹⁰ To use the system, FIs will provide encrypted transaction data to EuroDaT, which will then employ Atos's fraud detection algorithms to analyze the data and make connections across FIs to improve detection patterns and typologies of financial crimes.²¹¹ By centralizing the data analytics of many FIs, the Atos-EuroDaT application hopes to capture instances of financial crime that in isolation would otherwise evade detection, but observed across institutions may flag criminal networks spread across FIs.²¹² A platform

204. See FIN. ACTION TASK FORCE, *supra* note 165, at 40–42 (detailing the EuroDaT data sharing project's goals, functions, and challenges).

205. EURODAT, DATENSOUVERÄNITÄT IN VERNETZTEN ÖKOSYSTEMEN [Data Sovereignty in Networked Ecosystems], 5 (2022), https://www.euodat.org/fileadmin/user_upload/Broschuere_Datensouveraenitaet_in_vernetzten_Oekosystemen_06-2022.pdf [perma.cc/4JFL-G3CH].

206. *Id.* at 7.

207. *Id.*

208. See *id.* at 9 (defining the feasibility study group as working to progress the EuroDaT system to a stage where it may become “a federated ecosystem that unites stakeholders.”).

209. *Company Profile*, ATOS, <https://atos.net/en/company-profile> [perma.cc/SA7A-2VFL] (last visited Oct. 17, 2022).

210. *Federal Detection of Fraud and Financial Crime*, EURODAT, <https://www.euodat.org/en/federal-detection-of-fraud-and-financial-crime> [perma.cc/48SA-P3YT] (last visited Oct. 17, 2022).

211. See *id.* (“The concept: Banks provide encrypted transaction data to the neutral data trustee EuroDaT. EuroDaT enables the encapsulated execution of fraud detection algorithms developed by Atos on the data of several banks. This results in a significantly improved detection of fraud patterns and a reduced false positive rate at banks . . .”).

212. See *id.* (“[S]ince fraudsters operate in networks, money laundering transactions usually look unsuspecting from the perspective of individual financial institutions. As a

like this, which increases efficiency of crime detection without sacrificing DPP concerns, is precisely the sort of mechanism the U.S. might consider to improve existing BSA/AML compliance programs run by FinCEN.

VI. CONCLUSION

With nearly 25 million victims of human trafficking worldwide, coming from all populations, and impacting every industry, human trafficking is an international crisis and a crime that the financial sector must be concerned about.²¹³ As one of the world's most profitable crimes,²¹⁴ the proceeds of human trafficking regularly make their way through FIs as traffickers seek to conceal and profit from their crimes.²¹⁵ FIs are, therefore, uniquely well-positioned to spot indicators of human trafficking, and FIs working together with law enforcement enhances that ability.²¹⁶ Increased interagency and public-private collaborations would boost the effectiveness of existing BSA/AML regulation in decreasing human trafficking.²¹⁷ To make this unified front a reality,

result, they often remain undetected . . . [Together Atos and EuroDaT] will enable increased transparency of money and value flows across different banks.”).

213. See Emma Ecker, *Breaking Down Global Estimates of Human Trafficking: Human Trafficking Awareness Month 2022*, HUMAN TRAFFICKING INST. (Jan 12, 2022), <https://traffickinginstitute.org/breaking-down-global-estimates-of-human-trafficking-human-trafficking-awareness-month-2022/> [perma.cc/X9AX-AS2P] (“The ILO estimates there were 24.9 million victims of human trafficking around the world. The report uses the term ‘forced labour’ to describe the forms of exploitation commonly referred to as human trafficking in the United States and other nations.”).

214. OFF. TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, *supra* note 32, at 1; see *ILO Says Forced Labour Generates Annual Profits of US\$ 150 Billion*, INT’L LAB. ORG. (May 20, 2014), https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang--en/index.htm [perma.cc/D76B-N3WC] (reporting that forced labor generates \$150 billion in illegal profits per year in the global economy, with \$99 billion coming from commercial sex trafficking and \$51 billion coming from forced labor).

215. See Oleson *supra* note 30, at 17 (“Proceeds over \$5 million were laundered [in *United States v. Morris*] via more than 150 accounts at Wells Fargo, Bank of America, and JP Morgan Chase among other FIs.”).

216. See Thomson Reuters Foundation, *supra* note 36 (quoting John Panagopoulos, U.S. Head of Financial Crime Compliance, HSBC) (“Banks have the ability to spot indicators of human trafficking, and that ability is enhanced when banks work together and in collaboration with law enforcement and other organizations.”).

217. See FIN. ACTION TASK FORCE, *supra* note 165 (reporting on the importance of supporting information sharing across private and public entities to combat financial crime, while also ensuring data privacy and protection is upheld); *Core Career Descriptions*, *supra* note 126 (providing job descriptions for FinCEN analysts).

FinCEN should invest in developing a multi-stakeholder—potentially mandatory—information and communication platform for FIs and law enforcement bodies to collaborate on human trafficking detection and investigation.

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* Many thanks to Professor Lissa Broome, my editors Avery Aulds and Morgan Mumford, and all the editors and staff members of the Journal for their encouragement and direction in formulating this Note. This piece would not have reached publication without the significant support provided by my loving husband, Karl, and our dear friends, Shari and Brandon. Thanks for lending me your computers when mine crashed, tolerating my verbal editing process, and always letting me steal the dogs for a cuddle break. And to my father, Thomas: you were right—nothing happens without finance.