



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

July 18, 2024

The Honorable Josh Gottheimer
United States House of Representatives
Washington, D.C. 20515

Dear Representative Gottheimer:

Thank you for your letter dated July 8, 2024. As you know, the Treasury Department has a responsibility to protect the integrity of the U.S. financial system. That responsibility requires vigilance to guard against illicit uses of our financial infrastructure, especially those that may harm our national security. For these reasons, we share your concerns about recent state legislation that could impede financial institutions' compliance with crucial national security authorities that Treasury administers.

State laws interfering with financial institutions' ability to comply with national security requirements heighten the risk that international drug traffickers, transnational organized criminals, terrorists, and corrupt foreign officials will use the U.S. financial system to launder money, evade sanctions, and threaten our national security. For example, in May, the State of Florida enacted legislation known as HB 989, which defines as an "unsafe and unsound practice" a financial institution's reliance on any factor that is "not a quantitative ... standard" to determine which customers to serve or services to offer. It further prohibits consideration of a person's "affiliations" or "business sector" to make these decisions. By severely restricting the factors banks may consider when assessing risks, such laws create uncertainty and may inhibit effective anti-money laundering and countering the financing of terrorism (AML/CFT) and sanctions compliance programs, undermining efforts to promote national security.

States generally play an important role in regulating financial institutions' activities, including by promoting fair access to financial services. For example, state regulators serve crucial licensing, chartering, examination, and supervisory functions for money services businesses and state-chartered banks and credit unions. Risk-based state regulation is also an important element of Treasury's AML/CFT framework to help avoid the harmful practice of "de-risking," in which financial institutions terminate or restrict access for a range of customers without reference to individual risk-related factors, rather than analyzing and managing risks in a targeted manner. Among other things, de-risking drives activity out of the regulated financial system and can prevent low- and middle-income households, as well as other underserved communities, from effectively accessing financial services. We welcome collaboration with the states regarding these and other problems facing our financial system. However, we are concerned that HB 989 and similar state laws may materially undermine compliance with the important AML/CFT and sanctions requirements administered by Treasury's Financial Crimes Enforcement Network (FinCEN) and Office of Foreign Assets Control (OFAC).

FinCEN regulations implementing the Bank Secrecy Act (BSA) require banks to report suspicious activity and maintain a comprehensive AML/CFT program of risk-based policies, procedures, and controls to guard against illicit finance. These include procedures to assess each

customer’s risk profile—that is, the risk that the customer may engage in money laundering, terrorist financing, or other illicit transactions—and to devote more attention and resources to higher-risk customers and activities.

Banks must also comply with OFAC-administered economic sanctions under the International Emergency Economic Powers Act (IEEPA) and other statutes, which may prohibit financial transactions involving sanctioned persons and the provision of services to such persons or for their benefit. As with other forms of illicit finance, banks are strongly encouraged to adopt robust risk-based compliance programs to ensure that they do not engage in prohibited activity. While some factors banks use to comply with Treasury’s sanctions authorities are “quantitative,” as some state laws appear to require, others are not. Qualitative factors such as identification of red flags and unusual transactional patterns are critical to ensuring banks satisfy their sanctions obligations and reasonably mitigate their sanctions risks.

Bad actors seek to exploit weaknesses in our financial system, and our ability to stop them depends on assessments of risk-based factors including the services sought by a customer, the locations where the customer transacts business, and the particular bank’s ability to manage risks effectively. By prohibiting the consideration of any factor that is not “quantitative,” these state laws could prevent banks from considering these types of qualitative factors and discourage their efforts to appropriately identify and address risks.

Other requirements in HB 989 and similar legislation raise related concerns. For example, it is unclear whether the prohibition on considering a customer’s “affiliations” allows banks to assess a customer’s association with a designated terrorist group—a fact clearly relevant to risk-based assessments under the BSA and U.S. sanctions laws. Similarly, because the law prohibits banks from considering factors “related to the person’s business sector,” some institutions may believe they should disregard whether certain sectors—such as the international trade in goods critical to Russia’s war effort or the manufacture and sale of fentanyl precursor chemicals—are significantly higher-risk than others. Finally, by generally requiring state regulators to issue investigative reports following complaints of account closures or restrictions directly to the individuals who submitted them, state laws risk disclosing sensitive information regarding suspicious activity reports (SARs), which must be kept confidential under federal law. Even a redacted investigative report may implicitly reveal that a SAR has been filed, potentially tipping off terrorists, criminals, and others who would do our country harm.

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I appreciate your leadership in working to promote a safe, sound, and fair financial system as well as your attention to the critical national security concerns highlighted above.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Nelson", with a long horizontal flourish extending to the right.

Brian E. Nelson
Under Secretary for Terrorism and Financial Intelligence
U.S. Department of the Treasury

Identical letter sent to:
The Honorable Blaine Luetkemeyer
The Honorable Brad Sherman