

**WRITTEN TESTIMONY OF
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BEFORE THE
HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON OVERSIGHT
ON FINANCIAL TRANSACTION STRUCTURING
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I. Introduction

Chairman Roskam, Ranking Member Lewis, and members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the implementation of policy changes concerning seizure and forfeiture activities involving legal source structuring. The IRS's Criminal Investigation division (IRS-CI) plays an important role in the detection and deterrence of financial crimes such as structuring, and the enforcement of the asset forfeiture laws. These laws aim to divest criminals of the fruits of their crimes, restore fraudulently obtained funds to crime victims, and punish those who would wantonly violate federal criminal law.

Financial crimes weaken the U.S. financial system and threaten the integrity of our tax system, as funds from legal and illegal sources go untaxed and contribute to the tax gap. As the sole law enforcement agency responsible for investigating violations of our nation's criminal tax laws and supporting federal tax compliance, IRS-CI plays a vital role in fighting financial crimes, and has a long history of working in partnership with law enforcement organizations at the federal, state, and local levels. IRS-CI agents have become known as the best financial investigators in the government, and their skills are often sought by other law enforcement agencies and prosecutors. IRS-CI agents focus their efforts on such priorities as tax evasion, money laundering, public corruption, and terrorist financing. IRS-CI's conviction rate, which stands at 93 percent, is one of the highest amongst law enforcement agencies.

II. History

Since 1970, laws have been implemented to combat money laundering and other financial crimes. Specifically, in 1970, the *Bank Secrecy Act* ("BSA"), 31 U.S.C. § 5311 *et. seq.*, established a reporting and recordkeeping system to assist federal law enforcement and regulatory agencies in the detection, monitoring, and tracing of certain monetary transactions. These requirements have a high degree of usefulness in criminal, tax, regulatory investigations or proceedings, and the conduct of intelligence or counterintelligence activities, including analysis to protect against international terrorism. These requirements are imposed on individuals, financial institutions, and non-financial trades and businesses relative to monetary

transactions and banking relationships. BSA requirements include reporting currency transactions exceeding \$10,000. To circumvent BSA reporting requirements, criminals routinely manipulate cash transactions to fall below the \$10,000 reporting threshold.

In 1986, as part of the *Money Laundering Control Act of 1986*, Congress added a structuring provision to Title 31 (31 U.S.C. § 5324) which criminalized structuring for the purpose of evading the reporting requirement, and made a person who willfully violated the law subject to possible fines and imprisonment. Structuring can be used to conceal illegal cash-generating activities, such as drug dealing, and to conceal income earned legally in order to evade the payment of taxes.

Regardless of the source of funds, structuring financial transactions to evade BSA reporting requirements is a felony under Title 31. In 1994, in response to the Supreme Court's decision in *Ratzlaf v. United States*, 510 U.S. 135 (1994), Congress, as part of the *Money Laundering Suppression Act of 1994*, clarified the intent necessary to establish a structuring violation pursuant to 31 U.S.C. § 5324. In order to prove an act of structuring, the government must establish that the defendant knew of the relevant reporting requirements and structured his or her transaction for the purpose of evading those reporting requirements. Depending on the facts and circumstances presented, a conspicuous pattern of cash deposits or withdrawals may constitute circumstantial evidence that the bank's account holder acted with an illegal purpose.

III. Mitigation Process Prior to October 2014

Section 5317(c)(2) of Title 31, United States Code authorizes forfeiture of property involved in transactions or attempted transactions in violation of 31 U.S.C. §§ 5313(a) or 5324(a) in accordance with the procedures governing civil forfeitures in money laundering cases pursuant to 18 USC § 981. While the structuring statute does not distinguish between the structuring of legal or illegal sourced funds, in 1991, the Assistant Secretary (Enforcement), Department of the Treasury, approved mitigation guidelines for 18 U.S.C. § 981 seizures and forfeitures relating to 31 U.S.C. §§ 5313(a) and 5324 violations. The IRS's implementation of these guidelines recognized that the forfeiture of monies earned from a legal source remains a very sensitive area of enforcement operations and that great care must be exercised in applying the power given to us by Congress. Specifically, IRS procedures provided partial relief in cases involving a first offense, a legitimate funding source, and no criminal conviction. The IRS procedures also required IRS-CI to consider additional mitigating or aggravating factors. This process was used until the implementation of a policy change on October 17, 2014.

IV. The October 2014 Policy Change

The October 17, 2014 policy states that "IRS-CI will no longer pursue the seizure and forfeiture of funds associated solely with 'legal source' structuring cases unless: (1) there are exceptional circumstances justifying the seizure and forfeiture and (2) the case has been approved at the Director of Field Operations (DFO) level. The policy involving seizure and forfeiture in 'illegal source' structuring cases remains unchanged by this memorandum." On March 31, 2015, the Attorney General issued similar Guidance Regarding the Use of Asset

Forfeiture Authorities in Connection with Structuring Offenses to all Heads of Department Components and United States Attorneys. We believe the IRS's current policy strikes a balance between the needs of law enforcement and the rights of property owners. By concentrating on illegal source structuring violations, we are now able to devote our limited resources to investigating the most egregious federal violations, including those cases where structuring activity is indicative of other, more serious crimes.

This change in policy does not render prior seizures unlawful, as structuring is still a federal felony regardless of whether the source of the funds is legal or illegal. Rather, the policy is intended to more closely realign IRS priorities by focusing on other criminal violations within its jurisdiction. IRS-CI will continue to investigate structuring violations as they relate to other financial crimes, including tax and money laundering violations.

V. New Process Going Forward

In addition to this policy change, the IRS elevated the review and approval process for Petitions for Remission or Mitigation in certain Title 31 structuring seizure cases. Currently, all Petitions involving certain Title 31 structuring cases that are filed with a local IRS field office will be elevated through a CI area executive for ultimate consideration by the Chief, Criminal Investigation. The Chief will either render a decision on granting relief or make a recommendation through the respective United States Attorney's Office for consideration by the Asset Forfeiture and Money Laundering Section ("AFMLS"), Department of Justice, Criminal Division.

It is important to note that the IRS does not act alone in pursuing structuring violations. All warrants to seize structured funds are reviewed by an Assistant United States Attorney and then approved by a federal judge after a finding of probable cause. Once a seizure takes place, the applicable civil or criminal forfeiture process follows, pursuant to the Civil Asset Forfeiture Reform Act of 2000 (CAFRA), which established time limitations and other statutory rights for individuals whose property is seized.

If a property owner elects to pursue an administrative resolution, the IRS has control of the matter and may adjudicate the property owner's petition. By contrast, if the property owner files a claim, the matter is referred to the United States Attorney's Office, which must file, in federal district court, a civil complaint for forfeiture within 90 days of the property owner's filing of a claim, thereby converting the administrative proceeding into a judicial matter. From that point forward, the United States Attorney's Office has control of the case.

Chairman Roskam, Ranking Member Lewis, and members of the Subcommittee, we appreciate the opportunity to testify on this important topic and would be happy to take your questions.