



October 2, 2014

Financial Crimes Enforcement Network  
P.O. Box 39  
Vienna, VA 22183

RE: Request for public comment on customer due diligence requirements for financial institutions (RIN 1506-AB 25; Docket # FINCEN 2014-0001)

Submitted Electronically via: <http://www.regulations.gov>

To Whom It May Concern:

In response to Federal Register Notice Vol 79, No. 149, issued August 4, 2014 concerning the proposed changes to the Bank Secrecy Act for enhanced due diligence requirements for financial institutions; Transparency International-USA (TI-USA) submits the following comments.

TI-USA is a non-profit organization dedicated to strengthening accountability and transparency and combating corruption in the United States and internationally. We work individually and with others, including other Transparency International chapters in nearly 100 countries.

We welcome Financial Crimes Enforcement Network's (FinCEN) Notice of a Proposed Rulemaking about customer due diligence requirements for financial institutions. We support the efforts of the U.S. Treasury and specifically FinCEN's efforts to address the need to collect beneficial owner information on the natural persons behind legal entities. Requiring financial institutions to obtain and verify beneficial ownership information for accountholders is critical to keep the proceeds of corruption and other crimes from being laundered through the U.S. financial system. It is common for money launderers and people trying to find ways of sending or receiving funds or assets, while concealing their involvement in bribery and other forms of corruption, to hide their identities behind complex webs of shell companies. The amount of money stolen from developing and transition jurisdictions and hidden in foreign jurisdictions each year has been estimated at \$20-\$40 billion - a figure equivalent to 20-40 percent of flows of official development assistance.<sup>1</sup> Often shell companies are used to steal these public funds and the culprits mask their true identities such that the beneficial owner is not known.

Financial institutions have a crucial role to play as the first line of defence against the transfer of corrupt funds. Therefore, the proposal of a new separate requirement to identify and verify the beneficial owners of legal entity customers, as well as the addition of explicit customer due diligence requirements in each covered financial institution's core anti-money laundering program requirements, is a necessary step.

TI-USA has the following comments on specific provisions of the proposed rules:

a. Definition of Beneficial Owner

In the proposed rule, financial institutions are required to obtain beneficial ownership information from the individual who is opening an account on behalf of a legal entity. The proposed definition of "beneficial owner" includes an ownership prong and a control prong such that each individual who directly or

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<sup>1</sup> World Bank, "Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities and Action Plan," 2007, p 1.

indirectly owns twenty-five percent and an individual with significant responsibility to control, manage, or direct the entity should be named.

The control prong in the proposed rule is defined as “An individual with significant responsibility to control, manage, or direct a legal entity customer including

- (A) An executive officer or senior manager (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer);
- or
- (B) Any other individual who regularly performs similar functions.”

It is important to not conflate senior management with the beneficial owner. Often officials named in leadership positions for corporate entities are figureheads and control of the entity is exercised through other means. TI-USA proposes that the control prong of the definition be re-written to capture individuals who exercise control of the legal entity by other means.

We propose that the control prong be re-written as:

2. “All individuals with significant responsibility to control, manage, or direct a legal entity customer, including (A) Executive officers and senior managers (e.g., a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, and Treasurer); and (B) All other individuals who exercise ultimate effective control over the legal entity.”

This definition would better capture people who do not have legal ownership but ultimately control the entity behind the scenes. It is important that financial institutions are required to make inquiries with respect to this kind of control and this question is included in the Certification Form.

#### b. Existing Accounts

The proposed FinCEN rule does not extend the requirement to collect beneficial ownership information to legal entity accounts established before the implementation date of a final rule. TI-USA feels that it is essential that any proposed rule regarding beneficial ownership includes a requirement to obtain customer due diligence information on existing accounts utilizing a risk-based approach.

This is in line with the Interpretive Note to FATF Recommendation 10 that says, “Financial institutions should be required to apply CDD measures to existing customers on the basis of materiality and risk, and to conduct due diligence on such existing relationships at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained.”<sup>2</sup>

We also suggest that financial institutions be allowed an additional two year window to complete such actions on existing accounts. Thus, financial institutions would have one year from the proposal of a final rule to implement the new overall customer due diligence standard for new customers and an additional two years to conduct the risk based requirement for existing customers.

#### c. Verification of Beneficial Owners

FinCEN has proposed that financial institutions verify the identity of the beneficial owner but not the status of the beneficial owner (whether the person listed is indeed the beneficial owner).

We understand that in most cases financial institutions will have to rely on information provided on the Certification Form as evidence of beneficial ownership. However, financial institutions should be required to carry out appropriate due diligence based on the reasonableness of the information provided to them. Financial institutions would require additional diligence in various instances such as when kleptocrats use

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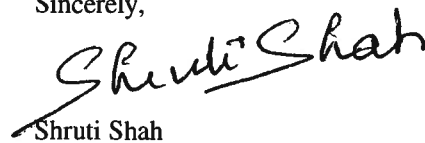
<sup>2</sup> FATF, “The FATF Recommendations,” Interpretive Note to Recommendation 10 (Customer Due Diligence), 2012, pp 62-63.

nominees, or if the information provided on the Certification Form does not stand up to scrutiny, or there are suspicions that the identity of the beneficial owner is not as it is being portrayed.

Requiring financial institutions to carry out appropriate due diligence to verify the beneficial ownership information would also bring the proposed rule in line with FATF Recommendation 10 which discusses customer due diligence. According to FATF Recommendation 10, the customer due diligence measures to be taken include: “(b) Identifying the beneficial owner and taking reasonable steps to verify the identity of beneficial owner, such that the financial institution is satisfied that it knows who the beneficial owner is....”<sup>3</sup>

Over the years, the United States has committed to implementing beneficial ownership transparency in a number of different fora. The final rule issued by FinCEN would be a strong signal that the U.S. is taking the necessary steps to uphold its commitments, and we thank you in advance for your continued action to ensure a strong and effective rule.

Sincerely,

A handwritten signature in black ink that reads "Shruti Shah". The signature is written in a cursive, flowing style with a long horizontal stroke under the "h" in "Shah".

Shruti Shah  
Senior Policy Director

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<sup>3</sup> FATF, “The FATF Recommendations,” Recommendation 10: Customer Due Diligence, 2012, p 14.