



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

April 7, 2016

The Honorable Ron Wyden  
Ranking Member  
Committee on Finance  
United States Senate  
Washington, DC 20510

Dear Senator Wyden:

Thank you for your letter requesting information on Treasury's ability to address terrorist financing and, specifically, to discuss the current lack of a regulatory requirement for financial institutions to identify and verify the "beneficial owners" of legal entity account holders. Treasury is committed to protecting the U.S. financial system from abuse by terrorist groups, such as the Islamic State of Iraq and the Levant (ISIL), as well as other illicit actors. To that end, Treasury will use all available tools to prevent such bad actors from abusing the U.S. financial system to raise, move, and use funds to finance or profit from their dangerous and illegal activities. Promoting a transparent financial system is an essential component of Treasury's efforts to combat money laundering and terrorist financing. Treasury is committed to clarifying and strengthening Bank Secrecy Act (BSA) regulations concerning the customer due diligence obligations of financial institutions with respect to their legal entity customers. We look forward to further engaging with Congress to find an effective statutory solution for the lack of a requirement for beneficial ownership information to be disclosed at the time a company is formed in order to complement our current regulatory efforts.

You asked for Treasury's views regarding several initiatives focused on obtaining beneficial ownership information, including an Administration budget proposal for the Internal Revenue Service (IRS) to readily share information about beneficial ownership, a Senate proposal that would require each state to collect the information, and a House proposal that would give authority to Treasury to collect beneficial ownership information from legal entities formed in the states that do not implement the legislation. Each of these proposals would provide a positive step toward collecting beneficial ownership information to increase transparency of legal entities formed in the United States.

Treasury, through the Financial Crimes Enforcement Network (FinCEN), has the necessary foundation to collect and use beneficial ownership information. As the Administrator of the BSA and the financial intelligence unit for the United States, FinCEN currently collects data from a wide range of financial institutions under current reporting requirements. FinCEN's database is available to well over 9,000 federal, state, and local law enforcement personnel and

regulators who query the database more than 30,000 times each day. In addition to being uniquely situated to collect such information and make it available to law enforcement and regulatory partners, FinCEN is further able to employ advanced data analytics to develop leads and other actionable intelligence, as well as to identify related trends and methods employed by criminals seeking to use legal entities as a means to launder illicit funds, finance terrorism or facilitate other serious criminal activity.

Separately, Treasury is working to finalize, in the very near term, a proposed rule to clarify and strengthen the customer due diligence obligations of financial institutions, as well as their responsibilities to know the identities of the real people who own or control legal entities. Treasury's proposed rule is outlined in a Notice of Proposed Rulemaking issued on August 4, 2014 ("proposed CDD rule").<sup>1</sup> Although we are still actively working on the rule and are not in a position to discuss its final wording, we emphasize that the purpose of the proposed CDD rule is to deny bad actors the ability to exploit the anonymity provided by the use of legal entities to engage in financial crimes. The proposed CDD rule is intended to bolster financial transparency, make it more difficult for wrongdoers to conduct covert illicit activity, and will better enable us to detect and disrupt money laundering and terrorist networks in the United States; it is one of our most important anti-money laundering and counter-terrorist financing priorities.

Specifically, the proposed CDD rule would require covered financial institutions to collect beneficial ownership information for legal entity customers at account opening. In an Advanced Notice of Proposed Rulemaking issued on March 5, 2012 ("ANPRM"), Treasury explored a two pronged definition of "beneficial owner" based on ownership and control.<sup>2</sup> The ownership prong is designed to identify individuals with substantial equity ownership interests. The control prong is intended to identify individuals with actual managerial control. Based on private sector comments concerning the clarity and workability of the ownership prong as crafted in the ANPRM, Treasury revised the definition of "beneficial owner" of legal entity customers in the proposed CDD rule to provide greater specificity. The proposed CDD rule definition includes: (1) an ownership prong requiring identification of individuals who directly or indirectly own 25% or more equity interests of a legal entity customer, and (2) a control prong requiring identification of an individual with significant responsibility to control, manage, or direct a legal entity customer, including (A) an executive officer or senior manager, or (B) any other individual who regularly performs similar functions.

You also asked about the proposed collection threshold, specifically asking whether the proposed threshold of a 25% equity interest would make it easier for wrongdoers to evade disclosure than the Foreign Account Tax Compliance Act (FATCA) statutory standard of 10%. This issue has also been raised in comment letters to the proposed CDD rule. Treasury is actively considering the concerns you have raised as well as related benefits to the goals of the BSA and burdens to industry.

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<sup>1</sup> 79 FR 45151 (August 4, 2014).

<sup>2</sup> 77 FR 76677 (March 5, 2012).

Finally, you asked whether the Administration budget proposal requiring certain financial institutions to report account balances of U.S. accounts held by foreign persons would lead to increased information sharing. The United States has been a global leader in establishing international standards for transparency and information sharing to combat cross-border tax evasion and other financial crimes. As part of implementing the Foreign Account Tax Compliance Act ("FATCA"), the United States has cooperated with certain foreign governments to enter into intergovernmental agreements (IGAs) that would provide reciprocal information on the U.S. financial accounts of certain foreign persons to foreign governments in exchange for information on the foreign financial accounts of U.S. persons, and of certain foreign entities that are controlled by U.S. persons. Current law does not require U.S. financial institutions to report the same scope of information required of foreign financial institutions under FATCA. For example, FATCA requires reporting by foreign financial institutions on the account balance or value of all financial accounts, whereas the United States generally only collects information on the U.S. source income paid to those accounts. Our reciprocal IGAs acknowledge the need to achieve equivalent levels of reciprocal automatic information exchange with partner jurisdictions, and express a commitment by the United States to further improve transparency and enhance the exchange relationship with the partner jurisdiction by pursuing the adoption of regulations and advocating and supporting relevant legislation to achieve such equivalent levels of reciprocal automatic information exchange. The Administration budget proposal requiring the reporting of account balances of foreign persons embodies this commitment.

Treasury shares your commitment to disrupting the funding mechanisms that fuel terrorism and preventing terrorists from exploiting the U.S. and global financial system. We look forward to working with you and others in Congress to identify statutory solutions that will enhance Treasury's tools to combat terrorist financing, money laundering, and other serious financial crimes. If you have any questions, Please contact me or have your staff contact Luke Ballman, Office of Legislative Affairs, at (202) 622-1900.

Sincerely,



Anne Wall

Assistant Secretary for Legislative Affairs