

Treasury Dept. Should Issue Comprehensive Rules to Combat Financial Corruption

Anti-corruption experts call for rules without loopholes or carve-outs for special interests

A Press Release from the U.S. Office of Transparency International
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On January 1 of this year, Congress passed the Corporate Transparency Act (CTA), legislation that brings U.S. anti-money laundering laws closer to global standards. The CTA requires companies formed in the U.S. to provide, for the first time, the name of the person(s) who own or control them.

The Financial Crimes Enforcement Network (FinCEN) of the U.S. Department of the Treasury is now tasked with writing the rules that will implement the law. As part of the rulemaking process, FinCEN requested public comments that are due today, and the U.S. office of Transparency International (TI-US) submitted an extensive set of recommendations in response to that call.

The CTA aims to prevent corrupt and other criminal networks from using anonymous shell companies to gain access to the U.S. financial system. It is the first significant update to our nation's anti-money laundering laws in two decades.

"The passage of the new law was a historic achievement," said Gary Kalman, Director of TI-US. "But it is how the law is implemented by FinCEN that will determine whether it lives up to its promise. Those critical decisions fall to the people now drafting the rules at Treasury."

Read the full TI-US [comment](#).

TI-US identified four especially important areas that will determine the ultimate effectiveness of the new law:

1. A comprehensive definition of "beneficial owner." FinCEN must not narrow the law's comprehensive definition of ownership or create loopholes that shady actors can exploit. In particular, the implementing rules cannot allow stand-ins or "front" people, such as a lawyer, employee, or other representative who has no relationship

with the true owner or owners, to be listed as a company's beneficial owners. The comment explains:

FinCEN must maintain the integrity of this definition in its implementing rules, in particular by adopting a broad interpretation of the "control" prong that specifies the indicators of company control....The drafters deliberately included both the 25 percent "ownership" provision and the "substantial control" provision in recognition of alternative arrangements and of how ownership stakes can be manipulated or masked....imagine a company created and controlled by a corrupt official with a brother, spouse, and two children. If each has an equal "ownership" stake of 20 percent, then no one would have to be reported as owning the company...the implementing rules should state that the term "control" means the power to vote, direct votes, appoint and replace board members, decide on the sale or termination of a company, and direct who takes possession of company funds or assets.

2. Narrow exemptions for certain entities. Exemptions to the CTA were carefully written to only exclude specific, discrete kinds of entities from having to report their beneficial owners. The United Kingdom learned after it exempted certain types of partnerships that seemingly small omissions can open up enormous possibilities for exploitation. FinCEN must not now expand those narrow exemptions to give corrupt actors a route for evading the law. The comment explains:

The extensive record of abuse of anonymous entities was determinative in moving Congress to include the CTA in the annual defense bill....Through over a decade of negotiations, Congress articulated 23 highly specific and exactingly detailed types of entities for exemption....TI's global network of experts and advocates have extensively documented how even small gaps in U.S. anti-money laundering laws can allow corrupt actors to exploit the U.S.'s financial system....FinCEN must not engage in rulemakings that result in the creation of new, unjustified exemptions for favored or powerful constituencies that will lead to future abuse or exploitation.

3. Timely, complete access to ownership information. Law enforcement and those with legally mandated anti-money laundering responsibilities must have timely and complete access to a company's ownership information. The law already sufficiently protects the security of this data, and FinCEN must not create any new roadblocks that could obstruct or delay effective and highly useful access to the new database. The comment explains:

Investigating cases involving corrupt officials and other wrongdoers requires timely access to basic information, including the identities of hidden owners of legal entities. Drug cartels, human traffickers, illegal weapons dealers, kleptocrats, and others often have sophisticated financial networks in which time is critical to uncover, stop, and punish wrongdoing. Delayed or restricted access to beneficial ownership information or other unnecessary hurdles would mean cases cannot move forward and criminals may escape justice. The CTA employs precise language

enabling law enforcement and financial institutions to access beneficial ownership data. In order to ensure effective access in practice, the CTA's implementing rules, in turn, must reflect the plain language and intent of the law.

4. Verified ownership data. Ownership information will only be useful if it is accurate. FinCEN must create meaningful procedures for verifying the information provided to the database, such as through automatic crosschecks with existing passport and drivers' license databases. This step to ensure accuracy does not present a technological challenge: FinCEN could, for example, use the same technology that payment processors use to run instant checks on online shoppers' credit cards. The comment explains:

FinCEN should partner with [existing databases]...to utilize their systems of instant verification of information provided by reporting companies. This would not only improve the quality of the data but would provide a great benefit to small businesses seeking to open bank accounts or obtain financing or other financial services. Verification at the point of entry reduces instances of typographical errors that would slow access to financial services and require reporting companies to re-enter data before proceeding with applications for services.

While there are many additional issues that FinCEN must resolve through their implementing rules, these are the most important for the ultimate success of the law. The CTA expressly charges FinCEN with ensuring the information it collects is "highly useful" to law enforcement and others who have access to it, as well as with minimizing any potential new burdens on businesses in complying with it. Loopholes, barriers to access, and a lack of verification would undermine both.

We look forward to working with FinCEN as the rulemaking process moves forward.

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Transparency International is the world's largest coalition against corruption. We give voices to victims and witnesses of corruption, and work with governments, businesses, and citizens to stop the abuse of entrusted power. In collaboration with national chapters in more than 100 countries, we are leading the fight to turn our vision of a world free from corruption into reality.

Our U.S. office focuses on stemming the harms caused by illicit finance, strengthening political integrity, and promoting a positive U.S. role in global anti-corruption initiatives. Through a combination of research, advocacy, and policy, we engage with stakeholders to increase public understanding of corruption and hold institutions and individuals accountable.

Related Resources

- Read the full TI-US [comment](#);
- Read TI-US's [factsheet](#) on access to the new beneficial ownership database;
- Read TI-US's [factsheet](#) on the definition of "beneficial owner";
- Read TI-US's [explanation](#) of the Corporate Transparency Act.

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