

March 10, 2015

Jennifer Shasky Calvery, Director  
Financial Crimes Enforcement Network  
U.S. Department of Treasury  
P.O. Box 39  
Vienna, VA 22183

Submitted electronically

Dear Ms. Shasky Calvery:

We, the undersigned civil society organizations urge the Financial Crimes Enforcement Network (FinCEN) to repeal the temporary exemption granted in 2002 to certain financial institutions,<sup>1</sup> including persons involved in real estate closings and settlements, from the PATRIOT Act requirement for implementation of anti-money laundering programs. We also urge FinCEN to strengthen and finalize the rules proposed in August 2014<sup>2</sup> requiring financial institutions to conduct due diligence on legal entity customers similar to the requirement for individual customers.

The New York Times' recent series, "Towers of Secrecy",<sup>3</sup> illustrates the ease with which it is possible to spend millions of dollars on anonymous real estate transactions facilitated by the real estate industry. Investors mask the true ownership of property in the United States through anonymous companies. The effects of such companies go far beyond hiding the ultimate owners of Manhattan's real estate. Anonymous companies allow corrupt politicians and organized crime to transfer and hide illicitly acquired funds worldwide, and fuel an abuse of power and a culture of impunity. The ability to conceal their illicitly obtained gains fuels corruption, breeds instability and diverts resources from those they should benefit.

These findings reveal that action on two fronts is necessary:

1. Requiring due diligence by professionals in the real estate sector; and
2. Requiring enhanced due diligence by financial institutions of legal entity customers.

The articles demonstrate the lack of due diligence by the real estate industry into buyers' identities, backgrounds or the sources of their funds. This lack of due diligence by the real estate industry was also highlighted in the 2010 report<sup>4</sup> issued by the U.S. Senate Permanent Sub-Committee on Investigations, which showed how foreign kleptocrats and their close associates were undermining U.S. anti-money laundering controls to bring funds into the United States that may have been the product of foreign corruption.

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<sup>1</sup>Under 31 U.S. Code § 5312 (2), persons involved in real estate closings and settlements are considered financial institutions, [https://www.law.cornell.edu/uscode/text/31/5312#a\\_2](https://www.law.cornell.edu/uscode/text/31/5312#a_2).

<sup>2</sup> FinCEN, *Proposed Rules: Customer Due Diligence Requirements for Financial Institutions*, Washington, D.C.: GPO, August 2014, Federal Register 45151, Vol. 79, No. 149, [http://www.fincen.gov/statutes\\_regs/files/CDD-NPRM-Final.pdf](http://www.fincen.gov/statutes_regs/files/CDD-NPRM-Final.pdf).

<sup>3</sup>"Towers of Secrecy," *The New York Times*, February 8-12, 2015, [http://www.nytimes.com/2015/02/08/nyregion/the-hidden-money-buying-up-new-york-real-estate.html?\\_r=0](http://www.nytimes.com/2015/02/08/nyregion/the-hidden-money-buying-up-new-york-real-estate.html?_r=0).

<sup>4</sup> U.S. Senate Permanent Subcommittee on Investigations, *Keeping Foreign Corruption Out of the United States: Four Case Histories*, Washington, D.C.: GPO, February 2010, [www.gpo.gov/fdsys/pkg/CHRG-111shrg56840/pdf/CHRG-111shrg56840.pdf](http://www.gpo.gov/fdsys/pkg/CHRG-111shrg56840/pdf/CHRG-111shrg56840.pdf).

The real estate sector is well positioned to detect schemes that use real estate to conceal the true source, ownership, location or control of funds generated illegally, as well as the companies involved in such transactions. Repealing the temporary exemption granted in 2002 would put an affirmative obligation on the real estate sector to conduct customer due diligence. It would bring the United States in line with the Financial Action Task Force (FATF) Recommendation 22. Recommendation 22 states that designated non-financial businesses and professions such as real estate agents should have the customer due diligence and record-keeping requirements set out in FATF Recommendations 10, 11, 12, 15, and 17.

In addition to removing the exemption for professionals in the real estate sector, FinCEN should also examine each of the temporary exemptions, including for “seller[s] of vehicles, including automobiles, airplanes, and boats” and “private bankers,” to determine whether these exemptions are still warranted.

Moreover, FinCEN must issue without delay rules requiring financial institutions to identify and verify the beneficial owners of legal entity customers. These rules need to be stronger than those proposed by FinCEN last summer: (i) strengthening the definition of “beneficial owner” and expanding it to include individuals who control the entities through means other than a formal management position, (ii) applying the new rules to existing accounts as well as new accounts, and (iii) requiring financial institutions not only to verify the identity of the (purported) beneficial owner, but to carry out appropriate due diligence to determine the reasonableness of the information provided to them (as they are currently expected to do to determine if an individual is a nominee, for example) and further diligence to determine the money laundering risk posed by that individual.

In addition to the actions above, we vigorously urge the Treasury Department to lend its support to legislation which would establish registers listing the ultimate owners who benefit from companies. These registers should be open to the public so that reporters, civil society, law enforcement and others can help identify and/or hold accountable those who misappropriate assets.

Over the years, the United States has committed to combating the flow of the proceeds of foreign corruption into the United States in a number of different fora. By repealing the exemption granted to persons involved in real estate closings and settlements from the requirement for anti-money laundering programs and issuing strong final rules relating to legal entity customer due diligence requirements for financial institutions, FinCEN would send a strong signal that the U.S. is taking the necessary steps to uphold its commitments.

We would like to request a meeting with you to discuss our concerns. Please contact Shruti Shah, Vice President for Programs and Operations, Transparency International-USA at [sshah@transparency-usa.org](mailto:sshah@transparency-usa.org) or call 202-589-1616 to schedule a meeting. We thank you in advance for your continued actions to safeguard our financial institutions from abuse.

Sincerely,

Center for Effective Government

Citizens for Responsibility and Ethics in Washington (CREW)

EG Justice

Financial Accountability and Corporate Transparency (FACT) Coalition

Global Financial Integrity

Global Integrity

Global Witness

Government Accountability Project (GAP)

Jubilee USA Network

Missionary Oblates USA

New Rules for Global Finance Coalition

OpenTheGovernment.org

Oxfam America

Tax Justice Network USA

Transparency International

Transparency International-USA

U.S. Public Interest Research Group (PIRG)