



FACTCOALITION
Financial Accountability & Corporate Transparency

FACT Sheet: Preventing Corrupt Politicians, Drug Traffickers and Terrorists from Accessing the U.S. Financial System

Strengthening the U.S. Anti-Money Laundering Framework through Regulatory Changes

1. Strengthen the U.S. anti-money laundering framework to stop criminal money from flowing into the U.S. The Treasury Department and other financial regulators shall:

- a. End some AML compliance exemptions, including for real estate agents and escrow agents that are currently not required to comply with AML rules.

Amend 31 C.F.R. § 1010.205(b) to remove from the list of exempt financial institutions:

- Seller of vehicles, including automobiles, airplanes, and boats
- Person involved in real estate closings and settlements

- b. Explicitly require financial institutions to identify the beneficial owner of all accounts.

Amend 31 C.F.R. § 1020.220(a)(2) to read:

The CIP must include risk-based procedures for verifying the identity of each customer. The procedures must enable the bank know the true identity of each customer, *including the ultimate beneficial owner of customers that are legal persons, including the settlor, trustee and beneficiary of trusts.*

- c. Require that banks only accept funds from a high risk senior political figure and any other individual where the bank's due diligence has satisfactorily identified that the source of funds is derived from legitimate activity.

Amend 31 C.F.R. § 1010.620(c)(1) to read:

In the case of a private banking account for which a senior foreign political figure is a nominal or beneficial owner, the due diligence program required by paragraph (a) of this section shall include enhanced scrutiny of such account that is designed to *verify that the source of funds is derived from legitimate activity.*

(NOTE: Further rulemaking or guidance would need to be published specifying the measures bank should take. In addition, this proposal will have to be altered if proposal 4 is implemented to broaden the definition of a PEP.)

- d. Require covered institutions to know which jurisdictions have made it illegal for PEPs to hold accounts abroad and make it illegal for financial institutions to knowingly accept these individuals as customers. Some countries make it illegal for senior politicians and officials to hold accounts abroad as a way of tackling corruption and illicit enrichment by officials. If a PEP customer, or potential customer, wishes to open an account in the U.S., despite being banned in his/her own jurisdiction from holding an account abroad, this should raise a serious due diligence red flag and the account should not be opened. Commercial databases should be able to include this as a type of information that they gather and update for their clients.

Insert the following text at the end of 31 C.F.R. § 1010.620(c)(1):

Some jurisdictions make it illegal for senior political figures to hold foreign bank accounts or to hold other office or paid employment. Covered financial institutions shall not open or maintain accounts for any person for whom it is illegal in their country to hold a foreign bank account.

2. Permit U.S. financial entities to request certain types of information from, and provide information to, other banks in the U.S., their overseas branches and foreign financial institutions that are subject to supervision from a country that is broadly in compliance with FATF standards without violating U.S. bank secrecy laws.

Amend 31 C.F.R. § 1010.540(b) to read:

Voluntary information sharing among financial institutions — (1) In general. Subject to paragraphs (b)(2), (b)(3), and (b)(4) of this section, a financial institution or an association of financial institutions may, under the protection of the safe harbor from liability described in paragraph (b)(5) of this section, transmit, receive, or otherwise share information with any other financial institution or association of financial institutions, *and any entity required to establish and maintain an anti-money laundering program pursuant to the laws in the country in which it is organized*, regarding individuals, entities, organizations, and countries for purposes of identifying and, where appropriate, reporting activities that the financial institution or association suspects may involve possible terrorist activity or money laundering.

Strengthening the U.S. Anti-Money Laundering Framework through Legislation

3. The U.S. is one of only four OECD countries that maintain a list of crimes that may be predicate offenses on which to base a money laundering charge, and we actually have two different lists, one for predicate offenses committed on U.S. soil and a shorter list for predicate offenses committed abroad. The United States should abandon the limited list system and include all felonies as predicate offenses for money laundering, including tax evasion.

Amend 18 U.S.C. § 1956(c)(7) to read as follows:

(7) the term “specified unlawful activity” means any act or activity constituting an offense in violation of the laws of the United States punishable by imprisonment for a term exceeding 1 year;

4. Extend current requirements for enhanced customer due diligence requirements from the small pool of foreign politically exposed persons (PEPs) who hold private bank accounts, as currently required, to all politically exposed persons, including domestic PEPs.
 - a. Amend 31 U.S.C. § 5318(a)(i) to read:

Due Diligence for United States Private Banking and Correspondent Bank Accounts Involving Foreign Persons, *and for Accounts Involving Senior Political Figures*

(1) In general – Each financial institution that establishes, maintains, administers, or manages a private banking account or a correspondent account in the United States for a non-United States person, including a foreign individual visiting the United States, or a representative of a non-United States person, *or establishes, maintains, administers, or manages an account for a senior political figure who is a United States or non-United States person*, shall establish appropriate, specific, and, where necessary, enhanced, due diligence policies, procedures, and controls that are reasonably designed to detect and report instances of money laundering through those accounts.
 - b. Amend 31 U.S.C. § 5318 by re-designating existing subparagraph (i)(4) to be (i)(5) and inserting a new subparagraph (i)(4):

(4) Minimum standards for private banking accounts held by US senior political figures. If a private banking account is requested or maintained by, or on behalf of, a senior political figure who is a citizen or permanent resident of the United States, then the due diligence policies, procedures, and controls required under paragraph (1) shall, at a minimum, ensure that the financial institution takes reasonable steps--

(A) to ascertain the identity of the nominal and beneficial owners of, and the source of funds deposited into, such account to guard against money laundering and report any suspicious transactions under subsection (g); and

(B) to conduct enhanced scrutiny of any such account that is requested or maintained by, or on behalf of, a senior political figure, or any immediate family member or close associate of a senior political figure, that is reasonably designed to detect and report transactions that may involve the proceeds of foreign or domestic corruption.
 - c. Amend the definition of a PEP under section 31 C.F.R. § 103.175 to remove all references to a “foreign” political figure.

Strengthening the U.S. Anti-Money Laundering Framework by Enforcing Current Law

5. The U.S. government should enforce Presidential Proclamation 7750, which is intended to prevent foreign officials from entering the U.S. when there is credible evidence of corruption against them.
 - a. Request a GAO report about how the Proclamation has been implemented and how often the U.S. has used its ability to ban visas to foreign officials and others suspected of corruption.
 - b. Require the State Department to provide Congress, in classified form if necessary, with a report on how Presidential Proclamation 7750 has been used and how FY10 appropriations language mandating that the Secretary of State compile and maintain a list of foreign governments and their immediate family members whom the Secretary has credible evidence have been involved in corruption relating to the extraction of natural resources has been implemented. The report should describe the evidence of corruption concerning individuals who are denied visas on corruption grounds, as well as provide the names of any individuals who have not been placed on the visa ban list because the Secretary of State has determined that the activities of the individual did not have a serious adverse effect on the national interest of the United States or that admission to the United States is necessary to attend meetings of international institutions or for any other reason, which shall be specified.

U.S. Leadership to Strengthen the Global Anti-Money Laundering Framework

6. Advocate that the U.S. government take a leadership role in promoting stronger anti-money laundering frameworks and enforcement at the global level, particularly by urging the Financial Action Task Force to develop a methodology for assessing enforcement and effectiveness, rather than just that the rules are in place, and to create a list of “high risk” countries that fail to enforce their AML laws effectively and require enhanced due diligence on financial transactions originating from or travelling through financial institutions in such countries and correspondent accounts with financial institutions in such countries.