

FinCEN Proposes Tighter Reporting Rules For U.S. Residential Real Estate Deals

Proposed anti-money laundering regulations could have a major impact on foreign investors in U.S. real estate.

The Financial Crimes Enforcement Network (FinCEN) of the U.S. Treasury has issued a [Notice of Proposed Rulemaking](#) (NPRM) for regulations designed to fight money laundering by increasing transparency in the U.S. residential real estate sector. The proposed rules could impact international investors in American residential real estate.

The proposed rule would require certain professionals involved in the closing or settlement of residential real estate transfers to report information to FinCEN about certain non-financed sales and transfers and to keep records.

What FinCEN terms “illicit actors” often favor non-financed transfers or “all-cash” sales of residential real estate that avoid scrutiny from financial institutions that have anti-money laundering program and Suspicious Activity Report (SAR) filing requirements under the U.S. Bank Secrecy Act. The proposal is also geared to hamper international money flow from drugs, human trafficking and threats to American national security.

“Illicit actors often hold residential real estate in the name of a legal entity or trust,” FinCEN said on the NPRM’s [fact sheet](#).

Building on a previous program

FinCEN's long-running Residential Real Estate Geographic Targeting Order program requires title insurance companies to file reports identifying the beneficial owners of legal entities that make certain non-financed purchases of residential real estate in select jurisdictions in the U.S.

The NPRM would require businesses, including attorneys performing specified closing or settlement functions for the non-financed sale or transfer of residential real property to an entity or trust, to collect and report information to FinCEN. This information includes:

Beneficial ownership information for the legal entity (transferee entity) or trust (transferee trust) receiving the property (the beneficial ownership information of certain legal entities is also collected under the [BOI Reporting Rule](#) of the Corporate Transparency Act but would serve different purposes under this rule);

Information about individuals representing the transferee entity or transferee trust;

Information about the business filing the report and about the residential real property being sold or transferred;

Information about the transferor (e.g., the seller);

Information about any payments made.

Administrative details

The proposed rule would require reporting on various types of residential real property transfers, including transfers of single-family houses, townhouses, condominiums and cooperatives, as well as buildings designed for occupancy by one to four families. It would also require reporting on transfers of land that is vacant or unimproved, but that is zoned, or for which a permit has been issued, for occupancy by one to four families.

In the case of reportable purchases, there is no threshold purchase price for the transfer. Transfers of ownership for which no consideration is exchanged, such as a gift, would need to be reported. Exempted transfers would be those involving an easement, that occur as the result of the death of the property's owner, that are the result of a divorce or that are made to a bankruptcy estate.

For a transfer to be reportable, it would need to be non-financed, meaning that it does not involve an extension of credit that is secured by the transferred property and extended by a financial institution subject to other reporting obligations. Transfers financed by private lenders that do not have an obligation to maintain an anti-money laundering program and a requirement to file SARs would be covered by the reporting requirement.

Reportable transferees

A transfer of residential real property would be reported only if at least one of the new owners of residential real property is a “transferee entity” or “transferee trust.” These categories are defined broadly to capture a wide variety of legal vehicles used to own property, such as LLCs, corporations, partnerships and trusts. Both domestic *and foreign* entities and trusts would be covered by the reporting requirement.

Certain definitional exceptions would apply for highly regulated types of entities and trusts that are less likely to be used by illicit actors to launder money through residential real property. (See the [proposed rule](#) for a complete list.)

‘Beneficial’ ownership

To be a beneficial owner of a transferee entity, an individual must, either directly or indirectly, exercise “substantial control” over the transferee entity, or own or control at least 25 percent of the transferee entity’s ownership interests (similar to the Corporate Transparency Act’s BOI rule).

The beneficial owner of a transferee trust would be any individual who is a trustee or otherwise has authority to dispose of transferee trust assets; is a beneficiary who is the sole permissible recipient of income and principal from the transferee trust or who has the right to demand a distribution of, or to withdraw, substantially all of the assets of the transferee trust; is a grantor or settlor of a revocable trust; or is the beneficial owner of a legal entity or trust that holds one of these aforementioned positions.

Reporting persons

FinCEN “expects” that the obligation to file Real Estate Reports would generally apply to settlement agents, title insurance agents, escrow agents and attorneys. Only one such real estate business would be required to file a report for any given reportable transfer.

The rule identifies two ways in which the reporting person would be determined. The default or “cascading” method would use a list of seven different functions that a real estate business may perform in a sale or transfer of residential real property, with the reporting obligation for any sale or transfer applying to the business that performed a function that appears highest on the list.

In an alternative method, the real estate businesses that perform the functions described in the cascading list may enter into a written agreement with each other to designate a professional that would file the report.

A Real Estate Report would need to be filed within 30 days after the date of the property’s transfer. The reporting person would be required to keep a copy of the Real Estate Report for five years, along with a form, signed by the transferee or a transferee’s representative, certifying that the transferee’s beneficial ownership information is correct. The reporting person would also be required to keep a copy of any designation agreement; other parties to the designation agreement would similarly need to keep copies of the agreement.

This is just an overview of what could be a significant new requirement for overseas investors in U.S. real estate. Written comments on this proposal are due on or before April 16. Comments may be submitted either on the federal E-Rulemaking Portal, <https://www.regulations.gov> or by postal mail to Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, Virginia, 22183. Only one method can be used to submit comments; in either case, refer to Docket Number FINCEN-2024-0005 and RIN 1506-AB54.

Your tax specialist needs to stay on top of this and many other issues of wealth, foreign income and tax enforcement. If we can help, please let us know.