Fact Sheet: FinCEN Issues Final Rule to Increase Transparency in Residential Real Estate Transfers

In August 2024, the Financial Crimes Enforcement Network (FinCEN) announced a final rule that is designed to combat and deter money laundering by increasing transparency in the U.S. residential real estate sector. The rule requires, on a nationwide basis, certain persons involved in real estate closings and settlements to report information to FinCEN about specified transfers of residential real estate that are a high risk for illicit finance. The final rule will take effect on December 1, 2025, and, consistent with any applicable requirements of the Paperwork Reduction Act, FinCEN will provide a separate opportunity for the public to comment on the form of the report mandated by the rule.

Illicit actors often favor non-financed transfers (including "all-cash" sales) of residential real estate to avoid scrutiny from financial institutions that have anti-money laundering and countering the financing of terrorism (AML/CFT) program and Suspicious Activity Report (SAR) filing requirements under the Bank Secrecy Act. Illicit actors also often hold residential real estate in the name of a legal entity or trust, in an effort to obscure their identities and their ownership interests in the property. Transfers that are both non-financed and involve a transferee that is a legal entity or trust are of higher risk for money laundering and make the proceeds of crime and their owners more difficult to track and identify. The reporting of these transfers will help curtail the anonymous laundering of illicit proceeds through the purchase of residential real property which threatens U.S. economic and national security.

Building on FinCEN's long-running Residential Real Estate Geographic Targeting Orders (GTOs)—which required 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 United States—this rule will address the demonstrated need for increased transparency and work to deter illicit use of the U.S. residential real estate market.

The final rule reflects FinCEN's consideration of the comments it received in response to the notice of proposed rulemaking that was published in February 2024. Commenters included a broad array of individuals, businesses, and organizations, including trade associations, transparency groups, law enforcement representatives, and other interested parties. In response to the commenters and in order to reduce potential compliance burden, FinCEN made several amendments to the proposed rule, such as the adoption of a reasonable reliance standard with respect to information provided by others. Additionally, in order to provide flexibility for real estate professionals in complying with the rule, the rule continues to contain a "cascade" system for determining which professional has primary filing responsibility, but with a with a flexible option for industry professionals to designate compliance responsibilities. FinCEN believes that the requirements set out in the rule reflect the appropriate balance between ensuring that reports filed under the rule have a high degree of usefulness to law enforcement and minimizing the compliance burden incurred by businesses, including small businesses.

The following provides a general overview of the key elements of the rule (for example, when a report is required to be filed, who must file, and when) and related administrative details. Please refer to the actual text of the final rule for further details, including important definitions.

Overview of the Final Rule

The final rule requires "reporting persons" performing specified closing or settlement functions in certain reportable transfers of residential real property to report specified information to FinCEN about the transfer. As explained in greater detail below, this includes information about the parties to the transfer and the property itself.

Reportable Transfers of Residential Real Property

Transfers are reportable when they meet the following criteria: (1) the property is residential real property; (2) the transfer is non-financed; (3) the property is transferred to a legal entity or trust, and (4) an exemption does not apply.

Transfers meeting the rule's requirements must be reported regardless of purchase price or the value of the property. Gift transfers are thus subject to the rule.

However, transfers made directly to an individual are not covered by this rule.

Definition of Residential Real Property

The rule applies only to residential real property located in the United States. Reportable property includes single-family houses, townhouses, condominiums, and cooperatives, including condominiums and cooperatives in large buildings containing many such units, as well as entire apartment buildings designed for occupancy by one to four families. The rule also requires reporting on transfers of land, such as vacant or unimproved land, on which the transferee intends to build a structure designed for occupancy by one to four families. Furthermore, a transfer of property may be reportable even if the property is mixed use, such as a single-family residence that is located above a commercial enterprise.

Definition of Non-Financed Transfer

For a transfer to be reportable, it must be non-financed, meaning that it does not involve an extension of credit to all transferees that is both (1) secured by the transferred property and (2) extended by a financial institution subject to an AML program and Suspicious Activity Report (SAR) obligations. Transfers that are financed only by a lender without an obligation to maintain an AML program and file SARs, such as a non-bank private lender, are treated as non-financed transfers that potentially must be reported.

Definitions of Transferee Entity and Transfer Trust

A transfer of residential real property must be reported if at least one of the new owners of residential real property is a "transferee entity" or "transferee trust." These categories include legal vehicles commonly used to own property, such as limited liability companies, corporations, partnerships, and trusts. Both domestic and foreign entities and trusts are covered by the reporting requirement.

Certain definitional exemptions apply for highly regulated types of legal entities and trusts that are less likely to be used by illicit actors to launder money through residential real property.

Exemptions from Reporting

Exemptions are provided for certain common, lower-risk transfers. A reportable transfer does not include:

- a transfer of an easement;
- a transfer resulting from the death of an individual, whether pursuant to the terms of a decedent's will or the terms of a trust, the operation of law, or by contractual provision;
- a transfer incident to divorce or dissolution of a marriage or civil union;
- a transfer to a bankruptcy estate;
- a transfer supervised by a court in the United States;
- a transfer made for no consideration by an individual, either alone or with their spouse, to a trust of which that individual, their spouse, or both of them, are the settlor or grantor;
- a transfer to a qualified intermediary for purposes of a like-kind exchange under Section 1031 of the Internal Revenue Code; and
- a transfer for which there is no reporting person.

Determination of Reporting Persons

FinCEN expects that the obligation to file reports will generally rest with settlement agents, title insurance agents, escrow agents, and attorneys. There is only one reporting person for any given reportable transfer.

The reporting person is determined by one of the following ways:

1. Reporting cascade: The reporting cascade consists of a list of seven different functions that a real estate professional may perform in a transfer of residential real property, with the reporting obligation for any such transfer applying to the professional that performed a function that appears highest on the list. For example, the first function on the list is the professional listed as the agent on the closing or settlement statement. If no such professional is involved in the transfer, then the reporting obligation applies to any professional that performed the second function on the list (*i.e.*, the professional that prepared the closing or settlement statement), and so on down the list.

2. Real estate professionals decide: Designed to provide flexibility to the industry and reduce potential burden, the real estate professionals that perform the functions described in the cascading list may enter into a written agreement with each other to designate the professional that will file the report for the transfer.

Required Information

The final rule requires that a reporting person provide information about the transfer of residential real property identifying the following:

- The reporting person;
- The legal entity (transferee entity) or trust (transferee trust) receiving ownership of the property;
- The beneficial owners of the transferee entity or transferee trust;
- Certain individuals signing documents on behalf of the transferee entity or transferee trust during the reportable transfer;
- The transferor (*e.g.,* the seller);
- The residential real property being transferred; and
- Total consideration and certain information about any payments made.

Beneficial owners of transferee entities: 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. This definition is consistent with the definition of a beneficial owner in FinCEN's Beneficial Ownership Information Reporting Rule. See https://fincen.gov/boi.

Beneficial owners of transferee trusts: The beneficial owner of a transferee trust is 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 an entity or trust that holds one of these aforementioned positions in the trust.

Reasonable Reliance on Information Provided by Others

When determining whether a transfer is reportable and when collecting required information, reporting persons may rely on information provided by any other person, but only if the reporting person does not have knowledge of facts that would reasonably call into question the reliability of the information.

With regard to the beneficial ownership information of transferee entities or transferee trusts, this reasonable reliance standard is slightly more limited. In these situations, the reasonable reliance standard applies only to information provided by the transferee or the transferee's representative and only if the person providing the information certifies the accuracy of the information in writing to the best of their knowledge.

Filing Real Estate Reports and Keeping Records

A report must be filed by the later date of either: (1) the final day of the month following the month in which the reportable transfer occurred; or (2) 30 calendar days after the date of closing.

The reporting person is not required to retain a copy of the report. However, they must keep for five years a copy of any certification, signed by the transferee or a transferee's representative, certifying that the transferee's beneficial ownership information, as well as a copy of any designation agreement signed. Other parties to the designation agreement similarly need to keep copies of the agreement.

Next Steps

The effective date of this rule is December 1, 2025. FinCEN will publish a notice regarding the form of the report at a later date, consistent with any applicable requirements of the Paperwork Reduction Act.