

# Fact Sheet: FinCEN Issues Notice of Proposed Rulemaking to Increase Transparency in Residential Real Estate

The Financial Crimes Enforcement Network (FinCEN) issued a Notice of Proposed Rulemaking (NPRM) that, if adopted, would combat and deter money laundering by increasing transparency in the U.S. residential real estate sector. 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 keep records.

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 (AML) program and Suspicious Activity Report (SAR) filing requirements under the Bank Secrecy Act. In an effort to obscure their identities, illicit actors often hold residential real estate in the name of a legal entity or trust. These types of transfers have been identified as vulnerable to money laundering, and FinCEN believes that the risk of illicit activity is sufficient to require reporting.

This is reflected in FinCEN’s long-running Residential Real Estate Geographic Targeting Order (GTO) program, which 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 United States.<sup>1</sup> The NPRM, if adopted, would build on the success of the Residential Real Estate GTO program and replace it with nationwide reporting requirements. The proposed rule also reflects FinCEN’s consideration of all public comments received in response to its December 2021 Advance Notice of Proposed Rulemaking on anti-money laundering regulations for real estate transactions, including comments from members of the public, real estate and financial industry associations, members of Congress, and non-profit organizations. FinCEN also consulted with U.S. government agencies.

The NPRM proposes a streamlined reporting framework that is designed to promote transparency while minimizing potential business burden. Under the proposed rule, professionals involved in real estate closings and settlements would remain exempt from the anti-money laundering compliance program requirements of the Bank Secrecy Act.

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
- Information about individuals representing the transferee entity or transferee trust

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<sup>1</sup> \$300,000 price threshold, \$50,000 in City and County of Baltimore.

- Information about the business filing the report (the reporting person)
- Information about the residential real property being sold or transferred
- Information about the transferor (*e.g.*, the seller)
- Information about any payments made

The NPRM proposes to require that a modified SAR be filed for any sale or transfer of residential real property that meets the requirements outlined in the proposed rule. As such, no discretionary decisions would be needed in determining when to file a report. Furthermore, the reporting person would not need to maintain an AML program. The modified SAR that would be used for reporting purposes would be known as a “Real Estate Report.” FinCEN hopes to provide a separate opportunity later in 2024 for the public to comment on the form of the Real Estate Report.

The proposed reporting requirement would enhance the ability of FinCEN and its law enforcement partners to investigate and prosecute money laundering through U.S. residential real estate, protecting U.S. economic and national security from illicit funds that result from drug trafficking, human trafficking, corruption, fraud, and many other crimes. If finalized, the resulting reports, like reports filed under the Residential Real Estate GTO program, would help law enforcement generate leads and support ongoing investigations, prosecutions, and asset forfeitures related to money laundering and other crimes. In addition, analysis of the aggregated reports would help FinCEN and its law enforcement and other national security partners identify high-level trends in the abuse of U.S. residential real estate for the purposes of money laundering. The proposed rule, if finalized, could also deter corrupt and criminal actors from storing money in U.S. residential real estate and distorting real estate prices.

FinCEN notes that the beneficial ownership information of certain legal entities is also collected under the [Beneficial Ownership Information Reporting Rule](#) implementing the Corporate Transparency Act. The beneficial ownership information reporting rule and this proposed rule, if adopted, would serve different purposes. Information proposed to be collected pursuant to this NPRM would enable law enforcement to directly tie individuals, entities, and trusts of interest to specific non-financed sales and transfers of U.S. residential real estate. For information on the Beneficial Ownership Information Reporting Rule, see <https://www.fincen.gov/boi>.

The following provides a general overview of the key elements of the Residential Real Estate NPRM and related administrative details. Please refer to the full NPRM for further details, including important definitions.

## Reportable Transfers of Residential Real Property

- 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; in other words, the transfer would be reportable irrespective of purchase price. Likewise, transfers of ownership for which no consideration is exchanged, such as a gift, would need to be reported.
- Exempted types of 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 (1) secured by the transferred property and (2) extended by a financial institution subject to AML program and SAR reporting obligations. Transfers financed by private lenders that do not have an obligation to maintain an AML program and a requirement to file SARs would be covered by the reporting requirement.

## Reportable Transferees

- As proposed, 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 limited liability companies, 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.
- The proposed exceptions for transferee entities are:
  - Securities reporting issuers
  - Governmental authorities
  - Banks
  - Credit unions
  - Depository institution holding companies
  - Money service businesses
  - Brokers or dealers in securities
  - Securities exchanges or clearing agencies
  - Other Exchange Act registered entities
  - Insurance companies
  - State-licensed insurance producers
  - Commodity Exchange Act registered entities
  - Public utilities
  - Financial market utilities
  - Registered investment companies
  - Subsidiaries of exempt entities
- The proposed exceptions for transferee trusts are:
  - Securities reporting issuers
  - Trusts in which the trustee is a securities reporting issuer

- Subsidiaries of an exempt trust

## Reportable Information

- The proposed rule would identify the beneficial owners of a transferee entity or transferee trust in the context of the residential real property transfer.
- It would therefore require the reporting of information describing the entity or trust, along with its beneficial owners and any individuals representing it; the real property being transferred; the transferor; any payments made; and the reporting person.
- **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 matches the definition of a reporting company’s beneficial owner in the context of FinCEN’s Beneficial Ownership Information Reporting Rule.
- **Beneficial owners of transferee trusts:** 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.
  1. A “cascade” method: The default 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. For example, the first function on the list is the business listed as the agent on the closing or settlement statement. If no such business is involved in the transfer, then the reporting obligation would apply to any business that performed the second function on the list (i.e., the business that prepared the closing or settlement statement), and so on down the list.
  2. An alternative method: Designed to provide flexibility to the industry and reduce potential business burden, 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.

## Filing Real Estate Reports and Keeping Records

- 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 a period of 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.