

ALERTS

FinCEN Issues Final Rule Requiring AML Reporting for Real Estate Sector

November 5, 2024

On Aug. 29, 2024, the Financial Crimes Enforcement Network (“FinCEN”), a bureau of the United States Department of the Treasury, issued a final rule (“Final Rule”)[1] extending anti-money laundering (“AML”) requirements to persons involved in real estate closings and settlements. The Final Rule requires certain persons involved in residential real estate closings and settlements to electronically submit reports to FinCEN (“Real Estate Reports”) and maintain records of certain non-financed transfers of US residential real property. The Real Estate Report must include, among other things, information concerning the property and identifying information on the entity or trust transferring the property and its beneficial owners, the transferor, and the person filing the Real Estate Report (“Reporting Person”). The Final Rule takes effect and the reporting obligations commence on Dec. 1, 2025.

The Final Rule largely codifies the substance of the notice of proposed rulemaking issued by FinCEN on Feb. 16, 2024 (“Proposed Rule”).[2] This *Alert* highlights those areas where the Final Rule departs from the Proposed Rule, including the key modifications and clarifications to the reporting obligations.

Authority for Rulemaking

FinCEN draws its authority for this Final Rule from the Bank Secrecy Act (“BSA”) which permits FinCEN to require anti-money laundering and countering the financing of terrorism (“AML/CFT”) programs for “persons involved in real estate closings and settlements”[3] and from the provisions of the BSA which authorize the Secretary of the Treasury to

require financial institutions to report, via suspicious activity reports (“SARs”), “any suspicious transaction relevant to a possible violation of law or regulation.”[4] More recently, the AML Act of 2020 added a provision to the BSA which directs FinCEN to “establish streamlined . . . processes to, as appropriate, permit the filing of noncomplex categories of reports of suspicious activity.”[5] FinCEN hopes to use these Real Estate Reports to identify illicit financial activity. The Final Rule follows FinCEN’s use of Residential Real Estate Geographic Targeting Orders (“GTOs”) since 2016 to collect information on a subset of transfers of residential real estate that FinCEN considers to present a high risk for money laundering. Recently, FinCEN renewed its GTOs in this sector through Apr. 14, 2025. [6]

Transfers of Real Property that are Reportable

The Final Rule imposes reporting requirements in connection with certain residential real estate transfers in which the purchaser or other party being transferred an interest in real property is a legal entity (“Transferee Entity”) or trust (“Transferee Trust”). Transfers made directly to individuals are not covered by the Final Rule. Real Estate Reports are only required where an ownership interest in residential real property is transferred to a Transferee Entity or Transferee Trust, not to an individual.

Residential real property under the Final Rule includes: (1) real property containing a structure designed principally for occupancy by one to four families; (2) land on which the transferee intends[7] to build a structure designed principally for occupancy by one to four families;[8] (3) a unit designed principally for occupancy by one to four families within a structure[9] or (4) a share in a cooperative housing corporation (“Reportable Property”).[10] Reportable Property only includes property located in the US, including any state, the District of Columbia, Indian lands and territorial possessions of the US.

An ownership interest is evidenced by rights to the property through a deed or, for an interest in a cooperative housing corporation, through stock, shares, membership, certificate or other contractual agreement evidencing ownership. The transfer is reportable even if one or more other transferees receive an ownership interest in the Reportable Property as part of the same transaction.

Transfers of Real Property that are Exempt

Transfers involving an extension of credit to a Transferee Entity or Transferee Trust are exempt from this reporting requirement if the credit is: (1) secured by the Reportable Property and (2) is extended by a financial institution that has an obligation to maintain an AML/CFT program and a requirement to file SARs (such as a bank). Transfers financed by a private lender or the seller do not fall within this exemption.

The Final Rule largely adopts the list of exemptions as proposed, while adding exemptions relating to transfers as the result of judicial determination, tax deferral and commonly used estate planning techniques. The Final Rule exempts transfers: (i) that are the result of a grant, transfer or revocation of an easement; (ii) that are a result of the death of an owner of the residential real property;^[11] (iii) that are the result of divorce or dissolution of a marriage or civil union; (iv) that are made to a bankruptcy estate; (v) that are supervised by a court in the United States; (vi) made to qualified intermediaries for the purpose of 26 C.F.R. 1.1031(k)-1 (also known as a 1031 or like-kind exchange);^[12] (vii) for which there is no Reporting Person; and (viii) made without consideration by an individual (either alone or with the individual's spouse), to a trust where the settlor or grantor of the trust is that same transferor individual, that individual's spouse, or both of them.^[13] Note that there are no exemptions based on the value of the property or the purchase price.

Key Terms

The definitions of Transferee Entity and Transferee Trust broadly include most entities or trusts obtaining an ownership interest in Reportable Property. However, there are exemptions to these definitions that cover certain highly regulated entities that are subject to an AML/CFT program and/or other significant regulatory reporting requirements, including certain pooled investment vehicles ("PIVs").

Definition of Transferee Entity. The Final Rule adopts the Proposed Rule's definition of Transferee Entity as "any person other than a transferee trust or an individual"^[14] that is not otherwise exempt. As discussed more fully below, many, although not all, of the entities exempt from reporting under the Corporate Transparency Act ("CTA")^[15] are also excluded from the definition of Transferee Entity. Those exempt entities include: registered investment companies, securities reporting issuers and certain banks, credit unions, depository institution holding companies, money service businesses, brokers or dealers in securities, securities exchange or clearing agencies, other Exchange Act registered entities, insurance

companies, state-licensed insurance producers, Commodity Exchange Act registered entities, public utilities, financial market utilities and US governmental authorities. The Final Rule clarifies that legal entities controlled or wholly owned, directly or indirectly, by any entity that falls within the exempt CTA categories listed above are themselves exempt.

PIVs that are investment companies and registered with the SEC are exempt from the definition of a Transferee Entity. However, PIVs that are not registered with the SEC may be Transferee Entities.[16] In the Proposed Rule, FinCEN reasoned that unregistered PIVs are not subject to comprehensive AML/CFT regulations and are therefore vulnerable to abuse by illicit actors.[17]

Notably, large operating companies as defined under the CTA are not exempt from the definition of Transferee Entity unless they fall under other exemption categories. Non-profit organizations are also not exempt from the definition of Transferee Entity.

Definition of Transferee Trust. The Final Rule adopts the Proposed Rule definition of Transferee Trust as “any legal arrangement created when a person (generally known as a settlor or grantor) places assets under the control of a trustee for the benefit of one or more persons (each generally known as a beneficiary) or for a specified purpose, as well as any legal arrangement similar in structure or function to the above, whether formed under the laws of the United States or a foreign jurisdiction”[18] that is not otherwise exempt. A Transferee Trust includes trust property titled in the name of the trustee in his or her capacity as trustee for the Transferee Trust. Excluded from Transferee Trusts are trusts that are securities reporting issuers or trusts that have a trustee that is a securities reporting issuer.[19] Statutory trusts are exempt from the definition of Transferee Trust but could be considered a Transferee Entity, unless subject to another exemption.

Definition of Beneficial Owner. Real Estate Reports must identify beneficial owners of Transferee Entities and Transferee Trusts. Consistent with the CTA,[20] a beneficial owner of a Transferee Entity is “any individual who, directly or indirectly, either exercises substantial control over the transferee entity or owns or controls at least 25% of the ownership interests of the transferee entity.”[21] Each such person must be reported. In circumstances where a Transferee Entity does not have any direct or indirect 25% or more owners, such as a tax-exempt organization, for example, the reportable beneficial owners are limited

only to the individuals who exercise substantial control over the Transferee Entity. Only those beneficial owners of the Transferee Entity on the date of closing must be reported.

A beneficial owner of a Transferee Trust is any individual who, at the time of the real estate transfer to the Transferee Trust: (1) is a trustee; (2) otherwise has authority to dispose of Transferee Trust assets, such as may be the case with a trust protector; (3) 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; (4) is a grantor or settlor of a revocable Transferee Trust; or (5) is the beneficial owner of a legal entity or trust that holds one of the positions described in (1)-(4), taking into account the exemptions that apply to Transferee Entities and Transferee Trusts.

Persons Responsible for Filing a Real Estate Report

The Final Rule adopts the cascade approach to reporting obligations provided in the Proposed Rule. In other words, FinCEN identifies seven levels of persons who may be responsible for filing the Real Estate Report. The first level of persons in the cascade would have the obligation to file the Real Estate Report. However, “if no person is involved in the transfer as described in the first tier of potential reporting persons, the reporting obligation would fall to the person involved in the transfer as described in the second tier of potential reporting persons, if any, and so on.”[22] The categories are based on the functions performed in a closing or settlement prepared for the transferee only. That means that a Reporting Person could be a buyer representative, real estate agent, or attorney, among other persons.

The cascade order is, as follows:

- First, real estate professionals providing certain settlement services in the settlement process (*e.*, a title company). This is the person listed as the closing or settlement agent on a settlement or closing statement.
- Second, if no one is listed as the closing or settlement agent, the reporting obligation next falls on the person that prepared the closing or settlement statement.
- Third, the person that files with the recordation office the deed or other instrument that transfers ownership of the residential real property.

- Fourth, the person that underwrites an owner's title insurance policy for the transferee is responsible for filing the Real Estate Report. If no such person is so designated, then the next person would be responsible for filing the Real Estate Report.
- Fifth, the person that disburses the greatest amount of funds in connection with the real estate transfer. Disbursement may be in any form, including from an escrow account, trust account or lawyer's trust account. This includes persons disbursing funds through third-party accounts and excludes direct transfers from transferees as well as disbursements coming directly from banks.
- Sixth, the person that prepares an evaluation of the title status in the form of a title check typically performed by the title insurance company.
- Seventh and finally, if none of the above exists, the person who prepares the deed or, if no deed is involved, any other legal instrument that transfers ownership of the residential real property would be responsible for filing the Real Estate Report.

There is no obligation of any persons identified in the cascade framework to verify that any other potential Reporting Person has filed a Real Estate Report. Although the cascade is the default way to determine the Reporting Person, those in the cascade can enter into a written agreement to designate another person in the cascade as the Reporting Person. However, the agreement can only apply to a specific transaction. [23]

Notably, the Final Rule excludes financial institutions with an obligation to maintain an AML/CFT program from the definition of a Reporting Person, as these institutions are subject to the more comprehensive AML/CFT program responsibilities including the SAR filing requirement.[24] Accordingly, where financial institutions would have otherwise been a Reporting Person, the reporting obligation falls to the next available person in the reporting cascade.

Where the Reporting Person is an employee, agent or partner acting within the scope of such individual's employment, agency or partnership, then the individual's employer, principal or partnership is deemed to be the Reporting Person. Accordingly, the employer, principal or partnership would have the responsibility to file a Real Estate Report with FinCEN. The following information must be included in a Real Estate Report for each

Reporting Person: (1) name; (2) principal place of business and (3) category of Reporting Person in the cascade.

Information that Must be Reported

The following information must be included on a Real Estate Report for each Transferee Entity, as applicable:

- *Transferee Entity*: (1) name; (2) trade name or “doing business as” name; (3) street address of principal place of business, and, if not in the US, the street address of the primary location in the US where the Transferee Entity conducts business; and (4) unique identifying number, such as a taxpayer identification number (“TIN”). Note that a legal entity identifier is not an acceptable unique identifying number.[25]
- *Beneficial owners of each Transferee Entity*: (1) name; (2) date of birth; (3) residential street address; (4) citizenship and (5) unique identifying number, such as a TIN.
- *Signing individual(s)[26] of each Transferee Entity*: (1) name; (2) date of birth; (3) residential street address; (4) unique identifying number, such as a TIN; (5) description of the capacity in which the individual is authorized to act as the signing individual; and (6) if the signing individual is acting in that capacity as an employee, agent, or partner, the name of the individual’s employer, principal, or partnership.

The Final Rule modifies the required information for a Transferee Trust to align more closely with information available on trust certificates issued under State law.[27] Accordingly, the following information must be included on a Real Estate Report for each Transferee Trust, as applicable:

- *Transferee Trust*: (1) name, such as the full title of the agreement establishing the trust; (2) date the trust instrument was executed; (3) unique identifying number, such as a TIN and (4) whether the trust is revocable.
- *Each trustee that is a legal entity*: (1) name; (2) trade name or “doing business as” name; (3) street address of principal place of business, and, if not in the US, the street address of the primary location in the US where the transferee trustee conducts business; (4) name and business address of the trust officer assigned to the trust; and (5) unique identifying number, such as a TIN.[28]

- *Beneficial owners of each Transferee Trust:* same as beneficial owners for Transferee Entities.
- *Signing individual(s) of each Transferee Entity:* same as signing individuals for Transferee Entities.

The following information must be included on a Real Estate Report for each transferor, as applicable:

- *Individual transferor:* (1) name; (2) date of birth; (3) residential street address; and (4) unique identifying number, such as a SSN or TIN.
- *Transferor entity:* (1) name; (2) trade name or “doing business as” name; (3) street address of principal place of business, and, if not in the US, the street address of the primary location in the US where the transferor entity conducts business; and (4) unique identifying number, such as a TIN.
- *Transferor trust:* (1) name; (2) date the trust instrument was executed; (3) unique identifying number, such as a TIN; (4) for each individual that is a trustee, name, address and unique identifying number, such as a TIN; and (5) for each legal entity trustee: name, trade name or “doing business as” name, street address of principal place of business, and, if not in the US, the street address of the primary location in the US where the transferor trustee conducts business and unique identifying number, such as a TIN.

The following information must be included in a Real Estate Report for each Reportable Property: (1) street address, if any; (2) the legal description, such as the section, lot and block; and (3) the date of the real estate transaction closing.

The following information must be included on a Real Estate Report concerning payments made in connection with a Reportable Property, as applicable: (1) total amount paid by all transferees for the property; (2) total amount paid by the Transferee Entity or Transferee Trust; (3) method of each payment made by the Transferee Entity or Transferee Trust; (4) accounts and financial institutions used for each such payment; and (5) if the payor is anyone other than the Transferee Entity or Transferee Trust, the name of the payor. Payments made from escrow or trust accounts held by a Transferee Entity or Transferee Trust are exempt.

The Real Estate Report must include whether the real estate transfer involved a credit extension by a person that is not a financial institution with an obligation to maintain an AML/CFT program and an obligation to file SARs.

The Reasonable Reliance Standard

The reasonable reliance standard under the Final Rule allows a Reporting Person to rely on information provided by any other person orally or in writing for purposes of reporting information or to make a determination necessary to comply with the Final Rule, “absent knowledge of facts that would reasonably call into question the reliability of the information.”[29] However, as emphasized in the Proposed Rule, a Reporting Person’s ability to rely on third party information is more limited when applied to the beneficial ownership information of Transferee Entities or Transferee Trusts. Accordingly, the Final Rule provides that the reasonable reliance standard only applies when beneficial ownership information is (i) provided by the transferee or the transferee’s representative; and (ii) such representative “certifies the accuracy of the information in writing to the best of their knowledge.”[30] This reasonable reliance standard is consistent with other customer due diligence requirements for financial institutions.[31]

Real Estate Report Filing Deadlines

The Final Rule requires a Reporting Person to file the Real Estate Report with FinCEN on the final day of the following month after which a closing took place, or 30 days after the date of the closing, whichever is later.[32] Unlike reports required under the CTA, the Final Rule does not require Reporting Persons to report changes to beneficial ownership of a Transferee Entity or Transferee Trust.[33]

Confidentiality

Real Estate Reports, like SARs, will be held in a secure FinCEN database and will not be publicly accessible. Unlike SARs, the Final Rule exempts Reporting Persons and Federal, State, local or Tribal government authorities from the confidentiality provision in 31 U.S.C. § 5318(g)(2), which prohibits disclosing the transaction that has been reported to any person involved in the transaction. The Real Estate Reports are not considered confidential from the other parties to the transaction.

Recordkeeping

Under the Final Rule, there is no obligation for a Reporting Person to retain a copy of a Real Estate Report they file, although it is a good practice for Reporting Persons to keep copies of such filed Real Estate Reports. The Reporting Person and each party to an agreement designating a Reporting Person must retain a copy of said agreement, as well as a copy of any beneficial ownership certification form provided to the Reporting Person for five years from the date of signing.

Penalties

The Final Rule does not provide specific penalties for omitted or inaccurate Real Estate Reports. Instead, FinCEN provides that penalties will follow the existing civil and criminal penalty structure under the BSA. As of the date of the Final Rule, civil penalties for negligent violations are \$1,394 for each violation (up to \$108,489 for a pattern of negligent activity) while the penalties for willful violations are the greater of the amount involved in the transaction (not to exceed \$278,937) or \$69,733.[34] Additionally, willful violations could result in up to five years of imprisonment or a criminal fine of up to \$250,000, or both.[35]

Summary

The Final Rule reflects FinCEN's increased focus on preventing illicit activities in the real estate sector. The Final Rule imposes AML compliance obligations on a broad group of participants in the US residential real estate sector; FinCEN estimates that over 170,000 Reporting Persons will be affected by the Final Rule, many of which were previously unregulated.[36] To ensure compliance and effective integration of the reporting requirements under the Final Rule, real estate industry participants should perform a pre-implementation review of their existing procedures to identify how they will meet these reporting obligations and address them before the Final Rule takes effect. Financial institutions involved in financings of real estate transactions should similarly review their procedures for such transactions to ascertain if they have any reporting requirements or if the transactions are exempt.

The Final Rule notes that FinCEN will continue to engage with stakeholders to clarify the application of the rule. Accordingly, the information in this *Alert* should be considered in conjunction with any applicable guidance that FinCEN may issue. FinCEN has already issued frequently asked questions summarizing the Final Rule, which can be of assistance to members of the real estate sector seeking to comply with

the Final Rule.[37] Additionally, FinCEN continues to issue GTOs for a subset of transfers of residential real estate that FinCEN considers to present a high risk for money laundering.[38]

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] Final Rule, Anti-Money Laundering Regulations for Residential Real Estate Transfers, 89 Fed. Reg. 70,258 (Aug. 29, 2024), available here (hereinafter, “Final Rule”).

[2] Notice of Proposed Rulemaking, Anti-Money Laundering Regulations for Residential Real Estate Transfers, 89 Fed. Reg. 12,424 (Feb. 16, 2024), available here (hereinafter, “Proposed Rule”). For more information on the Proposed Rule, please see our prior *Alert* “FinCEN Issues Proposed Rule to Implement AML Reporting Requirements for Real Estate Sector,” available here.

[3] 31 U.S.C. § 5312(a)(2)(U).

[4] 31 U.S.C. § 5318(g)(1).

[5] AML Act, § 6202 (*codified at* 31 U.S.C. 5318(g)(D)(5)(i)(1)).

[6] FinCEN, Geographic Targeting Order (Oct. 16, 2024), available here.

[7] The reasonable person standard adopted in the Final Rule permits the Reporting Person to reasonably rely on information provided by the transferee to determine such intent. Final Rule, 89 Fed. Reg. at 70,266.

[8] FinCEN updated this portion of the definition to address comments to the Proposed Rule relating to the difficulty in determining whether vacant or unimproved land is zoned or permitted for residential use. *Compare* Final Rule, 89 Fed. Reg. at 70,266 *with* Proposed Rule, 89 Fed. Reg. at 12,431 (“vacant or unimproved land located in the United States zoned, or for which a permit has been issued, for the construction of a structure designed principally for occupancy by one to four families”).

[9] Separate residential units within a building, such as individually owned condominium units, as well as entire buildings designed for occupancy by

one to four families, are Reportable Property. Final Rule, 89 Fed. Reg. at 70,266.

[10] Properties with a commercial element may be Reportable Property if they meet any of the prongs in the definition of Reportable Property, such as a single-family residence that is located above a commercial enterprise.

[11] Exempted transfers resulting from death include all transfers resulting from death, whether pursuant to the terms of a will or a trust, by operation of law, or by contractual provision.

[12] Like-kind exchanges are a commonly used Federal income tax strategy to defer the realization of gain or loss and the taxes associated therewith. This exception is limited to transfers made to “the qualified intermediary; transfers from a qualified intermediary to the person conducting the exchange (the exchanger) remain potentially reportable if the exchanger is a legal entity or trust.” Final Rule, 89 Fed. Reg. at 70,268.

[13] Final Rule, § 1031.320(b)(2)(vi).

[14] Final Rule, § 1031.320(n)(10).

[15] The CTA was enacted in January 2021 as part of the National Defense Authorization Act for Fiscal Year 2021 (CTA §§ 6401–03), available here.

[16] Final Rule, 89 Fed. Reg. at 70,282.

[17] Proposed Rule, 89 Fed. Reg. 12,433.

[18] Final Rule, § 1031.320(n)(11).

[19] Final Rule, 89 Fed. Reg. at 70,269.

[20] Final Rule, § 1031.320(n)(1) (referencing 31 C.F.R. 1010.380(d)).

[21] 31 C.F.R. 1010.380(d). For more information on the CTA and beneficial ownership information reporting obligations, please see our prior *Alerts*: (1) “FinCEN Issues Final Rule Requiring Reporting of Beneficial Ownership Information,” available here; (2) “The Corporate Transparency Act: Key Considerations for Compliance With the Beneficial Ownership Reporting Rule,” available here and (3) “The Corporate Transparency Act: The Private Funds Guide to Compliance With the Beneficial Ownership Reporting Rule,” available here.

[22] Final Rule, 89 Fed. Reg. at 70,270.

[23] Final Rule, 89 Fed. Reg. at 70,272.

[24] The Final Rule exempts financial institutions with an existing SAR filing requirement because Real Estate Reports are “streamlined SAR[s]” and such financial institutions “already have a SAR filing requirement that is more expansive than the streamlined reporting requirement adopted by” the Final Rule. Final Rule, 89 Fed. Reg. at 70,271. Such financial institutions include, among others, banks, broker-dealers, money services businesses, futures commissions merchants, introducing brokers, and mutual funds. 31 C.F.R. § 1010.100(t).

[25] Final Rule, 89 Fed. Reg. at 70,272.

[26] The term “signing individual” means each individual who signed documents on behalf of the Transferee Entity or Transferee Trust as part of the reportable transfer. Signing individuals do not include any individual who signed documents as part of their employment with a financial institution that has an obligation to maintain an AML/CFT program and an obligation to file SARs.

[27] While the information on such trust certificates varies by state, they generally do not contain information as to the trust officer or the address of the trust’s place of administration. *See* Final Rule, 89 Fed. Reg. at 70,273.

[28] Each trustee that is an individual is considered a beneficial owner.

[29] Final Rule, § 1031.320(j).

[30] *Id.* at § 1031.320(j)(2).

[31] *See* 31 C.F.R. § 1010.230(b)(2).

[32] Final Rule, § 1031.320(k)(3). The Final Rule does not include a Real Estate Report form, but FinCEN plans to issue one. *See* Final Rule, 89 Fed. Reg. at 70,277.

[33] *See* 31 C.F.R. § 1010.230(a)(2).

[34] 31 U.S.C. §§ 5321, 5322; 31 C.F.R. § 1010.821.

[35] 31 U.S.C. § 5322.

[36] Final Rule, 89 Fed. Reg. at 70,282-83.

[37] FinCEN, Real Estate Reports Frequently Asked Questions (Aug. 28, 2024), available [here](#).

[38] *See* FinCEN, Geographic Targeting Order (Oct. 16, 2024).

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