KPMG

# Regulatory Alert

Regulatory Insights

**August 2024**

## Financial Crime & AML: FinCEN Final Rule on Real Estate Transfer Reporting

***KPMG Insights:***

- ***Mandatory Reporting:*** *Requires real estate professionals to report on non-financed (e.g., all-cash, gift) residential real estate transactions.*
- ***National Expansion:*** *Expands the existing Residential Real Estate Geographic Targeting Order (GTO) program to a national scale.*
- ***Compliance:*** *Beginning December 2025, a Real Estate Report (a streamlined SAR) must be filed for covered transactions.*

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The Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) issues a final rule requiring professionals involved in U.S. residential real estate transactions (i.e., closings and settlements) to report certain information on non-financed transfers of residential real property to legal entities or trusts, including information regarding beneficial ownership.

Modifications to the proposed rule include the adoption of a 'reasonable reliance standard' with respect to information provided by others, as well as additions and clarifications to certain exemptions and exceptions (in response to comments received).

The rule expands the existing Residential Real Estate Geographic Targeting Order (GTO) program to a national scale and is intended to enhance transparency and combat money laundering within the U.S. residential real estate market, as well as assist the Treasury, law enforcement, and national security agencies in protecting U.S. economic and national security interests.

Details from the final rule are highlighted below.

**Applicability.** The rule requires professionals performing closing or settlement functions (e.g., settlement agents, title insurance agents, escrow agents, or attorneys) for the non-financed transfer of residential real property located in the United States to a legal entity or trust to collect and report information to FinCEN ("Reporting Persons"). *NOTE: In a change from the proposed rule, the final rule excludes financial institutions with Anti-Money Laundering (AML) / Countering the Financing of Terrorism (CFT) program requirements from the definition of "Reporting Person". FinCEN notes that transfers financed only by a lender without an obligation to maintain an AML/CFT program and file SARs, such as a non-bank private lender, are treated as non-financed transfers that potentially must be reported.*

- The final rule applies to non-financed transfers (i.e., "all-cash" or those not involving credit extended by a financial institution with AML/CFT and suspicious activity reporting (SAR) obligations and not secured by the transferred property) where the new owners (transferees) are a legal entity which include limited liability companies (LLCs), corporations, partnerships or a trust, both domestic and foreign. NOTE: Exceptions exist for certain "highly regulated" types of transferee entities and trusts (e.g., securities reporting issuers, banks, financial market utilities, and registered investment companies).
- The final rule does not include a threshold purchase price or property value for reportable transfers, and notes that transfers of ownership without

consideration (e.g., gifts) are reportable. Further, the final rule does not apply to transfers made directly to an individual.

- Residential real property is defined to include several types of properties located in the United States, including:
  - Real property containing a structure designed principally for occupancy by 1 to 4 families
  - Land on which the transferee intends to build a structure designed principally for occupancy by 1 to 4 families
  - A unit designed principally for occupancy by 1 to 4 families within a structure
  - Any shares in a cooperative housing corporation for which the underlying property is located in the United States. (For more explanation, refer to the final rule and related Fact Sheet.)
- Multiple exemptions are provided for certain "common, lower-risk transfers," including but not limited to transfers: i) involving easements, ii) due to the owner's death, iii) as a result of divorce or dissolution of marriage or civil union, iv) to a bankruptcy estate, and v) for estate planning purposes (subject to certain conditions).
- Two methods are provided for determining the specific Reporting Person responsible if multiple potential filers are involved.
  - A cascading method, consisting of a list of seven different functions that a real estate professional may perform where the reporting obligation for a transfer applies to the professional that performed the function that appears highest on the list.
  - An alternative method, where the real estate professionals can enter into a written agreement designating the Reporting Person.

**Reporting Information.** A streamlined SAR, termed a Real Estate 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. It must include information related to the:

- Transferee entity or transferee trust along with the beneficial ownership of the transferee entity or trust that is receiving the property. The definition of "beneficial owner" incorporates criteria such as exercising substantial control or owning at least 25% of the entity's interests, among other specifics for trusts and entities-Please refer to FinCEN's Beneficial Ownership Reporting Rule for additional information. *NOTE: In a change from the proposed rule, the final rule does not require reporting information identifying a trust officer or the address for the trust's place of administration.*
- Individuals representing the transferee.
- Reporting Person.
- Residential real property being sold or transferred.
- Transferor (e.g., the seller).
- Any payments made.

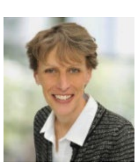
In response to comments, the final rule adopts a 'reasonable reliance standard', allowing reporting persons to, in general, reasonably rely on information obtained from other persons. However, for purposes of the beneficial ownership information of the transferee entity or trust, the 'reasonable reliance 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.

**Recordkeeping.** In a change from the proposed rule, the final rule only requires Reporting Persons to retain copies of any beneficial ownership certification from the transferee and any designation agreement for five (5) years, as opposed to the proposed retention of the entire Real Estate Report for that period.

**Effective Date and Compliance Period.** The final rule has an effective date of December 1, 2025. Prior to becoming effective, FinCEN will provide a form of the report for public comment.

**For more information**, please contact John Caruso or Dan Boylan.

## Contact the author:



**Amy Matsuo**
**Principal and National Leader**
Regulatory Insights
amatsuo@kpmg.com

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