



FACTCOALITION

Financial Accountability & Corporate Transparency

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U.S. Department of the Treasury  
P.O. Box 39  
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*Submitted electronically via [www.regulations.gov](http://www.regulations.gov)*

**Re: FinCEN Notice on Proposed Form for Residential Real Estate Reports (Docket Number FINCEN-2024-0019, OMB Control Number 1506-0080)**

Dear Director Gacki,

The Financial Accountability and Corporate Transparency (FACT) Coalition is a U.S.-based, non-partisan alliance of more than 100 state, national, and international organizations promoting policies to build a fair and transparent global financial system that limits abusive tax avoidance and curbs the harmful impacts of corrupt financial practices.<sup>1</sup>

On behalf of the FACT Coalition, this letter responds to the request by the Financial Crimes Enforcement Network (FinCEN) of the United States (U.S.) Department of the Treasury (Treasury) for comment on a proposed form for the Residential Real Estate Report (Residential RER), pursuant to the Anti-Money Laundering Regulations for Residential Real Estate Transfers final rule issued in August 2024 (final Residential Real Estate Rule, or final rule).

FACT welcomes the proposed form by FinCEN and believes the fields included in the proposal appropriately mitigate money laundering risk and will help law enforcement prevent, investigate, and prosecute instances of illicit finance. The final rule and associated form are aligned with and in service of FinCEN's core missions to support law enforcement and protect the U.S. from illicit finance risks. We believe slight refinements to certain questions could aid in the form's clarity

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<sup>1</sup> A full list of FACT members is available at: Financial Accountability and Corporate Transparency (FACT) Coalition (March 2024), "Coalition Members," <https://thefactcoalition.org/about-us/coalition-members-and-supporters/>. The views presented in this comment are not necessarily endorsed by every member of the Coalition.

and the resulting accuracy of information. We, however, take issue with FinCEN's excessive estimate regarding cost to industry.

### **Proposed Information Collection Will Mitigate Illicit Finance Risk, Improve Housing Access for Average Americans, and Aid Law Enforcement Operations**

In response to FinCEN's query as to "(a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility," below we enumerate ways in which we believe this rule is necessary.

#### *Residential Real Estate Presents Significant Illicit Finance Risk*

As FACT noted in a previous comment on FinCEN's proposed regulations for residential real estate transfers, the U.S. real estate sector has become a significant vector for illicit finance, drawing dirty money from sanctioned governments, corrupt oligarchs, or criminal enterprises.<sup>2</sup> A 2021 report by Global Financial Integrity on money laundering cases revealed that 82 percent involved a legal entity, trust, or other company structure to obscure ownership.<sup>3</sup> Most recently, the 2024 National Money Laundering Risk Assessment named real estate as a common money laundering methodology thanks to its value, stability, and ease of conducting anonymous transactions through LLCs, trusts, and pooled investment vehicles.<sup>4</sup> Money laundering through the opaque U.S. real estate sector has enabled U.S. adversaries to dodge sanctions, lined the pockets of corrupt foreign oligarchs, exacerbated America's fentanyl crisis by allowing perpetrators to launder criminal proceeds, and distorted housing markets in ways that diminish access to affordable housing, among other ills.<sup>5</sup>

The opacity of the sector, combined with its appeal to foreign investors, has made it challenging for U.S. law enforcement to "follow the money" and pursue investigations relating to real estate money laundering.

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<sup>2</sup> FACT Coalition Comment in Response to Residential Real Estate Rule Notice of Proposed Rulemaking (NPRM), April 16, 2024, pp. 4-6, <https://www.regulations.gov/comment/FINCEN-2024-0005-0603>.

<sup>3</sup> Lakshmi Kumar and Kaisa de Bel, "Acres of Money Laundering: Why U.S. Real Estate is a Kleptocrat's Dream," Global Financial Integrity, August 2021, p. 4, <https://gfintegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream/>.

<sup>4</sup> Department of the Treasury, "National Money Laundering Risk Assessment," February 2024 (2024 NMLRA), p. 75. <https://home.treasury.gov/system/files/136/2024-National-Money-Laundering-Risk-Assessment.pdf>.

<sup>5</sup> FACT Coalition Comment in Response to Residential Real Estate Rule NPRM, April 16, 2024, pp. 7-11, <https://www.regulations.gov/comment/FINCEN-2024-0005-0603>.

Despite the magnitude of the problem, U.S. anti-money laundering controls for real estate have fallen far behind those of the world's other large economies.<sup>6</sup> Failure to address regulatory gaps long identified by the global anti-money laundering standard setter, the Financial Action Task Force (FATF),<sup>7</sup> could trigger action by that body, such as grey-listing, which would carry severe economic consequences for the U.S., compromising U.S. ease of access to the international financial system.

*Final Rule and Subsequent RER Will Improve Housing Access for Average Americans, Presenting Additional Economic Benefit*

As 35 housing organizations addressed in a comment to the Notice of Proposed Rulemaking for the residential real estate rule,<sup>8</sup> FinCEN has appropriately assessed that money laundering through residential real estate drives market distortions, both in terms of pricing and supply of affordable housing. As the NPRM noted, “buyers without money laundering intent can be ‘crowded out’ of the residential real property market to deleterious effect... distortion can contribute to housing bubbles in affected areas, which may eventually burst and lead to economic instability in impacted regions.”<sup>9</sup> Studies from real estate markets in Canada, Italy, and the UK show similar market distortions associated with money laundering.<sup>10</sup>

Two economists at the University of Massachusetts-Amherst have reiterated the impact of dirty money on the availability of affordable housing. As the economists described in a recent piece:

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<sup>6</sup> Kim Ball, Scott Greytak, and Gary Kalman, “A Welcome Mat for Corruption: The U.S. and its Real Estate Market,” Transparency International U.S. Office, December 2023, <https://us.transparency.org/resource/a-welcome-mat-for-corruption/>.

<sup>7</sup> *Standards set in the FATF Recommendations 22 and 23 (“International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation,” Financial Action Task Force, 2012 (Updated November 2023)) require customer due diligence and suspicious transaction monitoring for real estate professionals. Instead, this proposal creates an RER, which is a ‘streamlined version of a Suspicious Activity Report’; Financial Action Task Force Asia/Pacific Group on Money Laundering, “Anti-money laundering and counter-terrorist financing measures, United States Mutual Evaluation Report,” December 2016, <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/MER-United-States-2016.pdf.coredownload.inline.pdf>, paragraph 281, 293, 298. *The U.S. remains non-compliant with Recommendations 22 and 23 in its 2024 Follow-up Report* (Financial Action Task Force, “United States,” <https://www.fatf-gafi.org/en/countries/detail/United-States.html>), despite progress in other areas. *The U.S.’ previous Mutual Evaluation in 2006 also recognized real estate money laundering vulnerabilities (para. 888 refers to a 2003 ANPRM on real estate in light of the known risk of money laundering in the real estate sector). The FATF recommended that a final rule should be issued to introduce AML obligations for persons involved in real estate closings and settlements (para 908). See Financial Action Task Force, “United States of America, Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism,” June 23, 2006, <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/MER%20US%20full.pdf.coredownload.pdf>.**

<sup>8</sup> Letter from 35 Housing Organizations in Response to the Residential Real Estate Notice of Proposed Rulemaking, April 16, 2024, <https://www.regulations.gov/comment/FINCEN-2024-0005-0605>.

<sup>9</sup> “Anti-Money Laundering Regulations for Residential Real Estate Transfers,” Notice of Proposed Rulemaking, 89 F.R. 12446, (Proposed February 16, 2024), (**Proposed Rule** or NPRM), <https://www.govinfo.gov/content/pkg/FR-2024-02-16/pdf/2024-02565.pdf>.

<sup>10</sup> Letter from 35 Housing Organizations in Response to Real Estate NRPM, April 16, 2024, <https://www.regulations.gov/comment/FINCEN-2024-0005-0605>.

You might assume that purchases of high-priced condos in big metropolitan areas would not impact prices for the kinds of houses that ordinary Americans want and need. But purchases of luxury units set off a cascade effect. As would-be buyers are priced out of the top tier of the market, they bid up prices in the next tier down. Buyers priced out of that tier bid up prices in the next, and so on down the line. Low-income people — including many “essential workers” — are priced out altogether and wind up having to live far from city centers with long commutes to their essential work.<sup>11</sup>

As the economists suggest in this piece, many of these more expensive properties lay vacant, and instead serve as an opaque investment into which the world’s criminal and corrupt park their illicit funds. The unavailability of these properties then exerts upward pressure on prices within the rest of the market. Ultimately, we agree that maintaining the integrity of the U.S. real estate market will have knock-on effects for protecting the most vulnerable in our communities.

### *Final Rule and Subsequent RER Will Aid Law Enforcement Investigations*

FinCEN’s rule to address money laundering through residential real estate appropriately focuses on high-risk transactions and marks a significant step forward in tackling money laundering through an economically significant U.S. industry. We agree with FinCEN’s assessment in the final rule’s regulatory impact analysis that this measure will address twin problems:

1. “The use of the United States’ residential real estate market to facilitate money laundering and illicit activity”, and
2. The lack of available data for law enforcement, or “access [that] is not sufficiently centralized to be meaningfully usable for purposes of market level risk-monitoring or swift investigation and prosecution.”<sup>12</sup>

This rule will have a meaningful benefit, both in establishing transparency to deter the most egregious money laundering schemes through U.S. residential real estate, and in providing greater data to inform case-level and macro-level understanding of residential real estate money laundering in the United States. Such data improvements can lower costs to law enforcement in their investigations while also providing social benefits. FinCEN likewise indicates its expectation of this outcome in the final rule:

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<sup>11</sup> James K. Boyce and Léonce Ndikumana, “The Little-Known Factor Driving up Housing Costs: Dirty Money,” Politico, October 12, 2024, <https://www.politico.com/news/magazine/2024/10/12/undocumented-workers-home-prices-00183126>.

<sup>12</sup> “Anti-Money Laundering Regulations for Residential Real Estate Transfers,” Financial Crimes Enforcement Network, 89 F.R. 70278 (Finalized August 29, 2024) (**Final Rule**), <https://www.govinfo.gov/content/pkg/FR-2024-08-29/pdf/2024-19198.pdf>.

...FinCEN expects that benefits would flow from the rule's ability to make law enforcement investigations of illicit activity and money laundering through residential real estate less costly and more effective, and it would thereby generate value by reducing the social costs associated with related illicit activity to the extent that it is more effectively disciplined or deterred.<sup>13</sup>

As we noted in our last comment, the Residential RER would serve a similar function for law enforcement as Suspicious Activity Reports (SARs) filed by financial institutions subject to customer due diligence obligations. There is ample evidence that AML-related reporting, including SARs, plays an important role in U.S. law enforcement. For example, in 2020, a report by the Government Accountability Office (GAO) documented the following:

Many federal, state, and local law enforcement agencies use Bank Secrecy Act (BSA) reports for investigations. A GAO survey of six federal law enforcement agencies found that more than 72 percent of their personnel reported using BSA reports to investigate money laundering or other crimes, such as drug trafficking, fraud, and terrorism, from 2015 through 2018.<sup>14</sup>

It is clear that the information collected on RER will continue to help law enforcement tackle illicit finance risks within the U.S. real estate sector.

*Proposed Residential RER will Further Inform Understanding of Residential Real Estate Money Laundering Methodologies and Protect U.S. National Security*

Importantly, the Residential RER will provide law enforcement additional tools to better understand money laundering risk pertaining to residential real estate.

The “practical utility” of information analogous to that reported in the Residential RER is evidenced by the decade-long renewal of temporary “geographic targeting orders” (GTOs). These orders require the disclosure of the beneficial owners of entities making all-cash purchases of residential real estate in certain jurisdictions and above certain cash thresholds. These disclosures have been renewed and expanded nearly a dozen times since 2016, suggesting their value to law enforcement in understanding and investigating money laundering through residential real estate. The final rule and resulting Residential RER will build on these

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<sup>13</sup> *Ibid.*

<sup>14</sup> Government Accountability Office (GAO), “ANTI-MONEY LAUNDERING: Opportunities Exist to Increase Law Enforcement Use of Bank Secrecy Act Reports, and Banks’ Costs to Comply with the Act Varied,” No. GAO-20-574, September 2020, at ‘GAO Highlights: What GAO Found,’ <https://www.gao.gov/assets/d20574.pdf>.

disclosures and address the shortcomings of the temporary, limited GTOs<sup>15</sup> providing comparable, nationwide information for law enforcement to prevent and investigate illicit finance through real estate.

The information to be collected under the final Residential Real Estate Rule will also serve a vital national security purpose, in allowing national security officials to deter, identify, and investigate illicit financial activities fueling sanctions evasion, international corruption, and terror financing through real estate. In recent examples, corrupt regimes, U.S. adversaries, and drug cartels have exploited the U.S. real estate sector with ease:

- In January 2023, a Venezuelan Supreme Court justice was indicted of conspiring to launder bribes, which were allegedly used to purchase properties in Italy, the Dominican Republic, Venezuela, and Miami.<sup>16</sup>
- In November 2022, Omar Morales Colon and his wife were sentenced for laundering more than \$1 million in drug proceeds, purportedly linked to the Sinaloa cartel, through real estate in Delaware and Pennsylvania. They deposited the funds into bank accounts with the assistance of family and friends and used the funds to buy cashier's checks to purchase the properties.<sup>17</sup>
- In July 2024, the Department of Justice obtained a settlement providing for a civil forfeiture of a mega-mansion in Los Angeles that it alleged was purchased using a trust that held tens of millions of dollars of bribe money laundered through fraudulent private loans, to the family of Armenian "super minister" Gagik Khachatryan.<sup>18</sup>
- In another case, between 2011-2014, Kenneth Zong helped the Iranian government transfer \$1 billion abroad in violation of sanctions. Zong laundered his profits from the scheme through U.S. real estate purchases, including residential properties in Colorado and Oregon.<sup>19</sup>

<sup>15</sup> As we note in our previous comment, it is clear that GTOs, on their own, have been insufficient to address widespread money laundering risks. See p. 5, <https://www.regulations.gov/comment/FINCEN-2024-0005-0603>

<sup>16</sup> U.S. Department of Justice, "Former President of Venezuelan Supreme Court Indicted on Charges of Accepting Bribes to Resolve Court Cases," Press Release, January 26, 2023,

<https://www.justice.gov/usao-sdfl/pr/former-president-venezuelan-supreme-court-indicted-charges-accepting-bribes-resolve>.

<sup>17</sup> U.S. Attorney's Office - Delaware, "Guilty Verdict in Eight-year Money Laundering Conspiracy," Press Release, July 25, 2022, <https://www.justice.gov/usao-de/pr/guilty-verdict-eight-year-money-laundering-conspiracy>; U.S. Attorney's Office - Delaware, "Delaware Man Sentenced to 45 years in Federal Prison for Trafficking over 150 Kilograms of Cocaine and Laundering the Proceeds," November 23, 2022,

<https://www.justice.gov/usao-de/pr/delaware-man-sentenced-45-years-federal-prison-trafficking-over-150-kilograms-cocaine-and>

<sup>18</sup> U.S. Department of Justice, "Justice Department Reaches Settlement to Recover Los Angeles Mansion Purchased by Family of Former Armenian Government Minister," Press Release, July 8, 2024,

<https://www.justice.gov/opa/pr/justice-department-reaches-settlement-recover-los-angeles-mansion-purchased-family-former>.

See also, The LA Times, "Feds seize huge L.A. mansion they say was bought with bribes," July 8, 2024,

<https://www.latimes.com/california/story/2024-07-08/feds-to-auction-off-mansion-at-center-of-armenian-bribery-allegations>.

<sup>19</sup> Lakshmi Kumar and Kaisa de Bel, "Acres of Money Laundering: Why U.S. Real Estate is a Kleptocrat's Dream," Global Financial Integrity, August 2021, p. 19,

<https://gfintegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream/>; Zach Dorfman, "The Ayatollah's Billion-Dollar Alaskan Bag Man," Politico Magazine, July 14, 2017,

Introducing anti-money laundering safeguards into U.S. residential real estate will have a meaningful impact on protecting U.S. national security and public safety.

*The Final Rule and Subsequent Residential RER Clearly Fit Within the Scope of FinCEN's Mission*

The disclosures in the Residential RER are not only aligned with FinCEN's mission, but prove crucial to the bureau's ability to execute its functions. FinCEN defines its mission as such: to "safeguard the financial system from illicit activity, counter money laundering and the financing of terrorism, and promote national security through strategic use of financial authorities and the collection, analysis, and dissemination of financial intelligence."<sup>20</sup> In each of FinCEN's roles – as the U.S. anti-money laundering standard setter, the nation's financial intelligence unit, and an important dissemination network and investigative support for law enforcement and national security officials – the Residential RER would augment the bureau's ability to be effective.

**While the Form is Comprehensive, Clear, and Easy to Complete, Certain Fields Would Benefit from Further Refinement**

In its notice, FinCEN's requests comment on "(c) ways to enhance the quality, utility, and clarity of the information to be collected." We believe that the form, as written, strikes an adequate balance between its comprehensiveness to inform law enforcement of money laundering risks in residential real estate, while mitigating compliance costs for industry where possible.

The fields in the form are adequate and appropriate to address money laundering risks. For instance, it is appropriate that FinCEN allows reporting persons to reasonably rely on information from parties to the transfer. However, we also agree that it is important to require that the transferee or representative certify in writing that the information is accurate to the best of their knowledge. Likewise, we value FinCEN's decision not to allow the filing of incomplete reports. We believe these measures are crucial to mitigate the filing of incomplete, inaccurate, or fraudulent information.

At the same time, the final rule and subsequent Residential RER reflect FinCEN's consideration of industry concerns to ensure that the rule is maximally practicable. For instance, FinCEN has

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<https://www.politico.com/magazine/story/2017/07/14/iran-money-laundering-kenneth-zong-215372/>. Jerzy Shedlock, "Former Alaska businessman faces charges for distributing \$1B in Iranian funds," Alaska Daily News, December 15, 2016, <https://www.adn.com/alaska-news/crime-courts/2016/12/15/former-alaska-businessman-faces-criminal-charges-for-distributing-1b-in-iranian-funds/>.

<sup>20</sup> "Mission," Financial Crimes Enforcement Network, Accessed January 11, 2024, <https://fincen.gov/about/mission>.

estimated that only the most complex transactions will utilize all 111 fields in the residential RER. Relatively simple transfers will only utilize approximately 60 percent of fields on the form, and, per the notice, “may require as few as approximately 40 fields to be completed.”<sup>21</sup> These fields, while several, are crafted to be both clear and discrete, enabling the uncomplicated completion of the form. (See the following section for additional consideration regarding costs.) We agree with FinCEN’s estimation that simple transactions will not necessitate the population of all fields in the form.

We believe that certain fields can be added or improved to provide clearer direction for filers and improve efficacy, with minimum additional impact on industry. For instance, we believe FinCEN could expressly include definitions — terms like “beneficial owner,” “hard money,” and “private money” — directly in the text of the form for ease of reference for filers.

Other recommendations are more location-specific within the proposed form, and may be reviewed below.

### Part I: Reporting Person

- Currently, the form requires no information as to who filed the report. Provision of such information would aid law enforcement in follow up during an investigation.
  - Change: Require the full name and email contact information for the individual filing the report on behalf of the reporting person (e.g. a compliance officer).
- The final form should further provide instructions for how a reporting person should self-identify in situations when they serve multiple roles within a real estate transaction.
  - Change: Consider adding language that would require a reporting person to select the first applicable role they play in the cascade.

### Part III: Transferee Information

- As written, there appears to be a typo in the section, “Person Associated with Transferee”. Under the subsequent bullet, “for each recorded transferee entity,” there appears to be redundant wording. Consider amending for clarity.
  - Change: Strike the phrase from the following: One or more signing individuals ~~must be recorded~~ (if any) must be recorded.

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<sup>21</sup> “Agency Information Collection Activities; Proposed Collection; Comment Request; Real Estate Reports,” Financial Crimes Enforcement Network, (Notice Issued November 13, 2024), 89 F.R. 89702, <https://www.govinfo.gov/content/pkg/FR-2024-11-13/pdf/2024-26262.pdf>. (Notice of the RER Form)



- *Alternative Change*: Move the parenthesis: One or more signing individuals must be recorded (if any) must be recorded).
- In Q39, the Residential RER requires filers to identify the person associated with the transferee as either a beneficial owner, signing individual, or legal entity trustee. A few lines earlier, however, FinCEN acknowledges that a trustee may be “a legal entity (reported here as a trustee that is a legal entity) or a trust.” Q39 and similar questions (e.g. Q41, 42, 49) should be amended for completeness to address that possibility.
  - *Change*: Add an option to Q39 that reads, “(d) Trustee that is a trust”.

#### Part IV: Transferor Information

- The language in the preamble to Part IV states that multiple transferors *may* be recorded” (emphasis added). This phrasing could be read to suggest that it is sufficient to name just one transferor on the RER, even in situations in which there may be multiple parties involved. Completeness is crucial to mitigate opportunities for abuse. To prevent misunderstanding or incomplete information, the language should be clarified to indicate that multiple transferors must be recorded, if that is how the transfer is structured.
  - *Change*: “The report must include information about the transferor individual(s), entity/entities, and/or trust(s) involved in the reportable transfer. All transferors must be recorded. In the case of multiple transferors, Part IV of the report will repeat for each transferor.”

These changes will ensure the completeness and accuracy of the information provided on the Residential RER, without adding any meaningful additional costs for industry.

We want to respond to comments from other submissions that FinCEN should include a field to allow reporting persons to acknowledge the customers’ lack of cooperation and allow the filing of an incomplete report. We have concerns about this recommendation, as the allowance of a field to say that the customer did not provide the information would render the reporting regime optional. A similar proposal to include an “unable to obtain” field was considered during the Corporate Transparency Act’s beneficial ownership information reporting (BOIR) form, and was rejected by FinCEN in response to widespread outcry from bipartisan Members of Congress;<sup>22</sup>

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<sup>22</sup> House Financial Services Committee Majority, “Press Releases McHenry, Whitehouse Lead Bipartisan, Bicameral Letter Demanding Proposed Beneficial Ownership Reporting Regime Reflect Congressional Intent,” April 4, 2023, <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=408688>.

industry associations like the American Bankers Association;<sup>23</sup> and transparency nonprofits.<sup>24</sup> We urge FinCEN to likewise consider carefully in this rule how bad actors could exploit such a field.

### **FinCEN Estimates Overstate Costs to Industry**

- *(b) the accuracy of the agency's estimate of the burden of the collection of information*
- *(d) ways to minimize the burden of the collection of information on respondents, including through the use of technology*
- *(e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.*

As described in the sections below, we believe that FinCEN's regulatory impact analysis overstates what costs industry can expect in practice pursuant to the final real estate rule. We recommend ways that FinCEN may consider revisiting its figure to more accurately reflect the rule's greater impact.

### *FinCEN Has Already Taken Meaningful Steps to Mitigate the Regulatory Impact of the Final Rule*

We appreciate the steps that FinCEN has taken in this rulemaking process to ensure that these measures to combat residential real estate money laundering “would not have a significant economic impact on a substantial number of small entities.”<sup>25</sup> We acknowledge ways that FinCEN has taken into account costs to industry and effectively balanced those concerns against the illicit finance risks associated with U.S. real estate.

### *Final Rule Is Less Comprehensive Than Similar Regimes in Other Jurisdictions*

The U.S. is the world's largest economy, and the dollar is the world's reserve currency. Given the outsized global importance of the U.S. financial system and its financial instruments — and the correlated money laundering risks — FinCEN could reasonably justify instituting anti-money laundering safeguards that match or exceed those of countries around the world, requiring more investment by industry in protecting the U.S. financial system from dirty money. Nevertheless, in crafting the final rule determining anti-money laundering regulations for residential real estate

<sup>23</sup> American Bankers Association, “Beneficial Ownership Information Reports, Docket Number FINCEN-2023-0002, OMB Control Number 1506-0076, 88 Fed. Reg. 2,760 (Jan. 17, 2023),” Submitted March 20, 2023, <https://www.aba.com/-/media/documents/comment-letter/clfincenboi20230320.pdf?rev=aaf9e266e9f04d67be25565422a1dc20>.

<sup>24</sup> FACT Coalition, “FACT Coalition Calls on U.S. Treasury to Overhaul Draft Form with Potential to Gut Landmark Transparency Law,” Press Release, March 20, 2023, <https://thefactcoalition.org/fact-coalition-calls-on-u-s-treasury-to-overhaul-draft-form-with-potential-to-gut-landmark-transparency-law/>.

<sup>25</sup> Final Rule, 89 F.R. 70288, <https://www.govinfo.gov/content/pkg/FR-2024-08-29/pdf/2024-19198.pdf>.

transfers, FinCEN struck an appropriate balance between anti-money laundering effectiveness and industry impact.

The information required in the Residential RER will provide meaningful information to law enforcement and at the same time, requires less of U.S. industry actors than analogous AML protections among the world's other large economies. A 2023 report by Transparency International U.S. analyzed legal requirements for anti-money laundering safeguards in real estate among OECD and other countries.<sup>26</sup> Of 21 countries studied, nearly all had more stringent requirements of real estate professionals than will be required of U.S. professionals in this final rule. For instance:

- All 21 countries instituted AML requirements that **applied to both residential and commercial real estate** transactions, with no distinctions between them.
- In 20 of the 21 countries, covered persons or entities were **required to conduct customer due diligence (“CDD”)** in every covered real estate transaction.
- In all 21 countries, covered persons or entities were required to **report suspicious activities** to law enforcement and/or regulators.
- In 20 of the 21 countries, at least one covered person or entity was required to both collect and **verify beneficial ownership information** for every covered real estate transaction.

Yet, despite the ample money laundering risks apparent in the U.S. real estate sector,<sup>27</sup> FinCEN took a more cost-conscious approach to real estate money laundering safeguards in its final rule. For instance, the final rule only applies to residential, not commercial, real estate. Further, FinCEN considered and rejected the full suite of anti-money laundering programs as a means to minimize costs for U.S. real estate professionals. As FinCEN noted in its final rule:

While imposing full AML/CFT program requirements on all real estate professionals would have almost certainly served to mitigate the illicit finance risks in the residential real estate sector, FinCEN considered that the costs accompanying this alternative would be commensurately more significant and would likely disproportionately burden small businesses. Such weighting of costs towards smaller entities was expected to increase transaction costs associated with residential real property transfers both directly via program-related operational costs and indirectly via the potential anticompetitive effects

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<sup>26</sup> Kim Ball, Scott Greytak, and Gary Kalman, “A Welcome Mat for Corruption: The U.S. and its Real Estate Market,” Transparency International U.S. Office, December 2023, p.3, <https://us.transparency.org/resource/a-welcome-mat-for-corruption/>.

<sup>27</sup> U.S. Treasury Department, “2024 National Money Laundering Risk Assessment,” February 2024, pp. 75-78, <https://home.treasury.gov/system/files/136/2024-National-Money-Laundering-Risk-Assessment.pdf>

of program costs and was therefore considered a less viable alternative than the streamlined reporting obligation proposed.<sup>28</sup>

Likewise, FinCEN eschewed requirements for real estate professionals to engage in any discretionary judgments — like those required of several other BSA-covered financial institutions — about the nature of suspicious activity through real estate transfers. Instead, FinCEN implemented a “reasonable reliance standard” in the final rule that will allow reporting persons to collect information from parties to the transfer without additional hurdles to verify the information received. Again, per FinCEN in the final rule:

The final rule contains additional exceptions for low-risk transfers and otherwise clarifies the scope of transactions to which the rule will apply, and also adopts a reasonable reliance standard with respect to information provided to reporting persons. As a result, FinCEN expects that the final rule will result in a more narrowly scoped burden in general than the proposed rule that was certified at the NPRM stage. FinCEN expects that small entities affected by the final rule would experience a proportionate share of this reduction in burden when compared to the proposed rule, resulting in a more limited burden for small entities under the final rule when compared to the proposed rule, noting again that the proposed rule was itself certified as not having a significant economic impact on a substantial number of small entities.<sup>29</sup>

Additionally, FinCEN considered and rejected requirements to not just collect but to certify beneficial ownership information. As FinCEN notes in its regulatory impact analysis:

FinCEN could have required the reporting person to certify the transferee’s beneficial ownership information instead of allowing them to rely upon the transferee entity or trust to certify to the reporting person that the beneficial ownership information they have provided is accurate to the best of their knowledge. FinCEN anticipated that this alternative would likely be accompanied by a number of increased costs, including a potential need for longer, more detailed compliance training; lengthier time necessary to collect and review documents supporting the reported transferee beneficial ownership information required; and increased recordkeeping costs.<sup>30</sup>

FinCEN has adopted reasonable and effective standards that minimize the cost of the rule for industry.

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<sup>28</sup> Final Rule, 89 F.R. 70288, <https://www.govinfo.gov/content/pkg/FR-2024-08-29/pdf/2024-19198.pdf>.

<sup>29</sup> Final Rule, 89 F.R. 70289.

<sup>30</sup> Final Rule, 89 F.R. 70288.

### *RER Requirements Are Likely More Cost Effective Than Those Under GTOs*

For nearly ten years, FinCEN has required title agents, under the GTOs, to certify beneficial ownership information provided by the all-cash purchaser of residential real estate. In contrast, the standard employed in the RER allows reporting persons to reasonably rely on information provided by parties to the transfer.

Likewise, FinCEN has required title agents, under the GTOs, to “retain all records relating to compliance with this Order for a period of five years from the last day that this Order is effective (including any renewals of this Order).”<sup>31</sup> The final rule, however, does not require reporting persons to maintain records of residential RERs filed. Instead, reporting persons need only maintain a record of any beneficial ownership certification form that was provided to the reporting person, as well as a copy of any designation agreement.<sup>32</sup> FinCEN estimates digital recordkeeping of these files to cost only \$0.10 per report.<sup>33</sup>

While not exhaustive, these examples demonstrate FinCEN’s efforts to minimize costs to industry.

As such, it is apparent that FinCEN took into consideration the needs of U.S. professionals, while also making sure that U.S. anti-money laundering protections aligned with best practices to mitigate illicit finance risk.

### *Lessons from other Jurisdictions Show AML Obligations Don’t Impede Growth of the Real Estate Sector*

As enumerated above, several jurisdictions already employ more detailed standards — establishing AML programs, covering residential and commercial real estate, filing SARs, etc. — than those finalized in the final rule. Real estate sectors in other countries have adapted accordingly and continued to grow, even where AML obligations placed on the real estate sector include customer due diligence and suspicious activity reporting, such as in the United Kingdom.<sup>34</sup> The number of real estate agencies in the U.K. has grown by 10.6 percent in the year

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<sup>31</sup>FinCEN, “Geographic Targeting Orders,” Renewed October 16, 2024, <https://www.fincen.gov/sites/default/files/shared/Phase-19-Order-FINAL-508.pdf>.

<sup>32</sup> Final Rule, 89 F.R. 70276. See 12. 31 CFR 1031.320(l), regarding record retention.

<sup>33</sup>Final Rule, 89 F.R. 70287.

<sup>34</sup> Hannah Meakin and Nathan Condoleon, “Financial Crime Spotlight: Money Laundering Controls in the Real Estate Sector,” Norton Rose Fulbright, February 2024, <https://www.nortonrosefulbright.com/en/knowledge/publications/856b621d/financial-crime-spotlight-money-laundering-controls>.

preceding April 2023, and by 20.6 percent in the previous five years.<sup>35</sup> FinCEN’s current proposal places fewer obligations on those involved in residential U.S. real estate.

### *FinCEN Estimates Overstate Time Spent Collecting Information*

FinCEN overestimates the cost of filing in two significant ways. First, FinCEN estimates it will take reporting persons/their employees approximately 2.5-2.75 hours to file a residential real estate report (2 hours to collect the information, and 30-45 minutes to file).<sup>36</sup> However, we believe that the 2-hour estimate overstates the amount of time needed for reporting persons to collect information. First, much of the information collected in the Residential RER for submission to FinCEN is already collected by real estate professionals in the course of a real estate transaction: for instance, real estate professionals already collect key information about the transferors, transferees, the property, and related payments. As such, there should be no additional burden in identifying these details for the report. Technology, as discussed below, could ease the collection burden by taking information already collected in the regular course of transactions and repurposing it for the residential RERs.

Second, reporting persons are able to “reasonably rely” on information provided by parties involved in the transaction to fill in the gaps for other fields in the report. This requires no action or judgment from the professional, and instead only requires them to get this information from the relevant parties. It seems unlikely that a reporting person would need to spend an average of 2 hours of staff time to follow up with parties to share this information.

We are unpersuaded by arguments by other commenters that legal counsel would be required to determine whether a transfer is reportable. FinCEN has established clear criteria: any U.S. residential real estate transfer of any value that involves an entity or a trust and that is non-financed. This determination is even clearer and simpler to operationalize than the still relatively simple standards employed by the GTOs, which required discretion as to geographical boundaries, value thresholds, and more. Therefore FinCEN should not give undue consideration to this concern.

### *Impact Analysis Does Not Account for Cost Offsets of GTO Program Sunset, Development of New Technology to Aid in Information Collection*

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<sup>35</sup> Property Reporter, “UK estate agency sector sees 10% growth in the last year,” April 13, 2023, <https://www.propertyreporter.co.uk/uk-estate-agency-sector-sees-10-growth-in-the-last-year.html>.

<sup>36</sup> In the notice for this form, FinCEN increased its estimate for average time to file the report by 15 minutes over the final rule. See Notice of RER Form, 89 F.R. 89704, <https://www.govinfo.gov/content/pkg/FR-2024-11-13/pdf/2024-26262.pdf>.

FinCEN’s estimates do not account for how costs of the RER may be offset by the dissolution of the real estate Geographic Targeting Orders. These programs, while important, were temporary in nature, disincentivizing both FinCEN and industry from developing purpose-built forms and technology to accommodate reporting. For instance, the GTOs required title agents to repurpose Currency Transaction Reports (CTRs) to report the beneficial owner behind entity purchases of real estate in certain jurisdictions. As we understand, these forms had to be completed in one sitting, without an online function to save progress part-way through filing, adding to the burden on industry. These are just a few of several examples of how the temporary nature of the GTOs disincentivized government action to meet the needs of filers. In developing the Residential RER, FinCEN has an opportunity to develop forms that are tailored and more responsive to industry practices.

Further, as the GTO program was temporary and only renewed in 6-month intervals, title agencies did not take steps to develop technology to file more efficiently, such as the use of APIs to assist in data population. Further, batch filings were not common under GTOs: While FinCEN enabled batch filings in 2018, the bureau received zero report filings in batch format for Form 8300 or real estate GTOs between January 2016 and August 2024.<sup>37</sup> Rather than any cost consideration, we hypothesize that the trend toward separate — rather than batch — filing may have been influenced by the strictures of FinCEN’s reporting deadlines and the comparatively low volume of reportable transfers under the GTOs. We agree with FinCEN in the notice that, because of the extent of RER requirements and expected volume of RERs,<sup>38</sup> “certain reporting persons may now find it more cost-effective to invest in technological updates that would facilitate batch filing.”<sup>39</sup>

Under the final real estate rule, industry will be spending less on a patchwork of regulations in place under the GTOs and voluntary SARs filings for real estate. Instead, FinCEN has set clear guidelines that will allow industry to more smoothly adapt to new requirements.

We support FinCEN working with industry to consider ways to streamline compliance and minimize reporting costs. Technology, as is utilized in other BSA reporting, would help to reduce associated costs to businesses. For instance, technology would allow industry to enable APIs for data population and to standardize batch filing. Further, technology already in use for real estate transactions could be adapted to auto-populate fields for FinCEN forms. While new practices and

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<sup>37</sup> Notice of the RER Form, 89 F.R. 89703, <https://www.govinfo.gov/content/pkg/FR-2024-11-13/pdf/2024-26262.pdf>.

<sup>38</sup> *FinCEN expects 850,000 reports a year*. See Final Rule, 89 F.R. 70283, <https://www.govinfo.gov/content/pkg/FR-2024-08-29/pdf/2024-19198.pdf>.

<sup>39</sup> Notice of the RER Form, 89 F.R. 89703, <https://www.govinfo.gov/content/pkg/FR-2024-11-13/pdf/2024-26262.pdf>.

technology may contribute to up-front costs to industry, such advancements will also meaningfully reduce the annual costs of filing over time.

*FinCEN Rightfully Assesses that Certain Costs Will Not be Borne by Industry, but Does Not Account For This Likelihood in the Impact Analysis*

We agree with FinCEN that “there may be a meaningful distinction between the concept of being burdened, or affected, by the rule and bearing the cost of the rule.”<sup>40</sup> We believe that, ultimately, the real estate industry will recoup its costs from parties to the transfer, those parties’ tenants, or the housing market writ large.

With that said, average Americans should not fear the impact that certain cost increases might pose to the regular course of real estate transactions.

*Scenario 1: Costs are Borne by Parties to Reportable Transfers*

First, if we assume that real estate professionals pass on costs associated with new reporting requirements, it is likely that they would pass these costs to their clients or other parties in the transfer. As we note in our previous comment,<sup>41</sup> these parties are disproportionately wealthy compared to Americans purchasing their first home, most of whom rely on financing, (e.g. mortgages) to make the purchase. Instead, the individuals who engage in *non-financed* transfers and who *use entities or trusts* to make that transfer are a relatively small subset of the market. For instance, a higher proportion of all-cash transfers were conducted to purchase a second home, suggesting an increased ability to absorb carry-on costs over lower-income individuals and families. Consider the data included in our earlier comment:

This rule would impact only a small subset of total residential real estate transactions and would not make purchasing a home harder for the average American. The vast majority of Americans buy their homes in their own name, rather than through a shell company or trust. According to data from Zillow, only a fraction of residential real estate buyers are corporations or trusts. Data from 2010 to 2019, for example, shows that corporations

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<sup>40</sup> Final Rule, 89 F.R. 70278, <https://www.govinfo.gov/content/pkg/FR-2024-08-29/pdf/2024-19198.pdf>.

<sup>41</sup> FACT Coalition Comment in Response to Residential Real Estate Rule NPRM, April 16, 2024, pp. 11, 17, <https://www.regulations.gov/comment/FINCEN-2024-0005-0603>.



constituted only 13 percent of buyers in that period, whereas trusts<sup>42</sup> proved to be an even smaller fraction – 3.3 percent.<sup>43</sup>

Further, most buyers in the United States finance their real estate purchase, whether through a mortgage or other means. A January 2024 study by the National Association of Realtors (NAR) states that only 6 percent of first-time buyers and 26 percent of repeat buyers made an all-cash purchase in 2023.<sup>44</sup> Those that did make an all-cash purchase were most often buying a vacation home or were acting as a real estate investor.<sup>45</sup> This means that only a very small percentage of real estate purchases are *both* made through an entity or trust, and are non-financed, particularly for those purchasing a primary residence. That data shows the proposed rule would have no negative impact at all on most Americans.

Second, our partners and real estate associations have observed the outsized participation of foreign purchasers in all-cash U.S. real estate transfers. Consider our earlier comment:

In a study of federal REML cases between 2016 and 2021, Global Financial Integrity found that 82 percent of studied cases involved illicit foreign money that was invested in the U.S. real estate sector.<sup>46</sup> As noted in the NPRM,<sup>47</sup> the National Association of Realtors estimates that 44 percent of international purchases between April 2021 and March 2022 were non-financed, compared to 24 percent for all purchases.<sup>48</sup> This data suggests that foreign purchases of U.S. real estate are more likely to be non-financed, and therefore may present a larger money laundering risk. This data is also in line with previous estimates from Global Financial Integrity that all-cash purchases constituted

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<sup>42</sup> *Since the submission of our NPRM comment in April, FinCEN has issued new estimates about the number of reportable transfers that will involve a trust. As the final rule explains, "FinCEN does not expect the proportion of reportable transfers involving a transferee trust to exceed 5 percent of potentially affected transfers."* Final Rule, 89 F.R. 70281, <https://www.govinfo.gov/content/pkg/FR-2024-08-29/pdf/2024-19198.pdf>.

<sup>43</sup> Matthew Collin, Florian Hollenbach and David Szakonyi, "The Impact of Beneficial Ownership Transparency on Illicit Purchases of U.S. Property," Anti-Corruption Data Collective, February 2022, p. 12, <https://acdatacollective.org/wp-content/uploads/2022/02/The-impact-of-beneficial-ownership-transparency-on-illicit-purchases-of-US-property.pdf>.

<sup>44</sup> Melissa Dittmann Tracey, "Share of Cash Buyers Surges to Decade High," Realtor Magazine, March 11, 2024, <https://www.nar.realtor/magazine/real-estate-news/share-of-cash-buyers-surges-to-decade-high>.

<sup>45</sup> *Ibid.*

<sup>46</sup> Lakshmi Kumar and Kaisa de Bel, "Acres of Money Laundering: Why U.S. Real Estate is a Kleptocrat's Dream," Global Financial Integrity, August 2021, p.24, <https://gfindtegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream>.

<sup>47</sup> NPRM, 89 F.R. 12430, <https://www.govinfo.gov/content/pkg/FR-2024-02-16/pdf/2024-02565.pdf>.

<sup>48</sup> National Association of Realtors, "2022 International Transactions in U.S. Residential Real Estate," July 2022, pp. 4–5, <https://www.nar.realtor/sites/default/files/documents/2022-international-transactions-in-us-residential-real-estate-07-18-2022.pdf>.

between 25 and 30 percent of all purchases, with foreign buyers at 39 percent all-cash.<sup>49</sup> (Note, however, that this estimate was “all-cash” and not “non-financed.”)

As such, if real estate professionals were to shift their costs to the parties involved in reportable transfers, it would be very unlikely that there would be any change in the average person’s ability to purchase a home.

Further, it is likely that the parties involved in a reportable transfer could easily absorb the impact of a carry-on cost to the total consideration for the property, while industry may decide to bear the start-up cost of the rule. On that assumption, using the midpoint of FinCEN’s annualized 90th percentile wage cost estimates<sup>50</sup> and FinCEN’s estimate for expected RERs filed on an annual basis,<sup>51</sup> we would expect to see an additional cost of approximately \$680 per transfer on average. However, for each transfer, there are at least two parties (transferor and transferee), and perhaps several more. As such, the cost could be borne by multiple parties.

Given the benefits of U.S. residential real estate ownership, and the large value of the purchase itself (as we know from the GTOs, many of these properties represent many millions of dollars), an extra fee of \$340 or less per transferor and transferee would be insignificant compared to the total consideration.<sup>52</sup>

We are unpersuaded by other comments that “wealthier citizens” and other individuals using entities and trusts for estate planning are unduly burdened by additional costs associated with real estate money laundering safeguards. By electing to participate in the U.S. real estate sector using legal vehicles that present a higher risk of money laundering, these individuals accept a shared responsibility to ensure the integrity of the U.S. real estate market. This scenario is akin to choosing to drive a motor vehicle: drivers are legally required to secure a license and provide identification, and to get insurance in the event of the worst-case scenario, even if they are never involved in an accident. Unlike this analogy with licensing and ongoing insurance costs, a fee to

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<sup>49</sup> Global Financial Integrity, Comment in Response to Residential Real Estate ANPRM, April 16, 2024, p. 15, <https://gfintegrity.org/report/gfi-comment-submission-to-fincen-on-anprm-to-curb-illicit-financial-flows-in-the-us-real-estate-sector/>.

<sup>50</sup> FinCEN determined in the final rule that annual costs after start up would range between \$401.2 and \$663.2 million (midpoint \$532.2 million). (Final Rule, 89 F.R. 70284). Likewise, FinCEN increased its estimates in the notice to account for a potential increase in filing time for certain types of reports by 15 minutes, resulting in an estimated additional \$45.3 million each year (Notice of RER Form, 89 F.R. 89704). In this calculation, we use FinCEN’s midpoint range (\$532.2 million) and the subsequent \$45.3 million, for a total of \$577.5 million each year.

<sup>51</sup> Final Rule, 89 F.R. 70283, <https://www.govinfo.gov/content/pkg/FR-2024-08-29/pdf/2024-19198.pdf>.

<sup>52</sup> Even using the high range figure from FinCEN’s estimate (\$663.2 million) and FinCEN’s additional cost estimate (\$45.3 million), we would expect (\$708.5 million / 850,000 reports), we would expect an average of \$834 per transfer / \$417 per party or less.

cover RER costs — if these costs are indeed passed onto customers — would be a one-time expense in the course of an otherwise multi-thousand (or multi-million) dollar transaction.

### *Scenario 2: Costs are Borne Across All U.S. Residential Real Estate Transfers*

If real estate professionals instead choose to distribute this additional cost across the market, this only further dilutes the impact that the rule would have per transaction. By way of example, there are nearly 5 million residential real estate transactions in the U.S. every year.<sup>53</sup> Using the same FinCEN figures from above, these costs would average about \$120 per transfer, or \$60 or less per party.<sup>54</sup>

The average tenure of homeownership is approximately 13.2 years.<sup>55</sup> Investing \$60 once every decade to keep our financial system safe from dirty money — money that fuels fentanyl trafficking, undermines U.S. national security, and funds corruption — is a sensible investment in U.S. public safety.

### **Conclusion**

FACT is grateful for the opportunity to comment, and remains available for further discussion and input. Please contact Erica Hanichak ([ehanichak@thefactcoalition.org](mailto:ehanichak@thefactcoalition.org)) with any questions or comments.

Respectfully submitted,

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<sup>53</sup> *The St. Louis Federal Reserve estimated that the seasonally adjusted annual rate of existing home sales equaled 4,150,000, as of December 19, 2024. See <https://fred.stlouisfed.org/series/EXHOSLUSM495S>. In addition, U.S. Census data estimates new home sales at a seasonally adjusted annual rate of 664,000 at the end of 2024. See U.S. Census, “Monthly New Residential Sales, November 2024,” Updated December 23, 2024, <https://www.census.gov/construction/nrs/current/index.html>. This suggests to a total estimate of 4,814,000 residential real estate transactions a year.*

<sup>54</sup> Even using the high range figure from FinCEN’s estimate and subsequent adjustment (\$708.5 million), we would expect an average cost of \$147 per transfer, or about \$74 or less per party to the transfer.

<sup>55</sup> National Association of Realtors, “Changes in Home Ownership Tenure?” November 2022, <https://www.nar.realtor/magazine/real-estate-news/changes-in-homeowner-tenure>.