FACTCOALITION
Financial Accountability & Corporate Transparency

February 18, 2022

Mr. Him Das, Acting Director
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U.S. Department of the Treasury
P.O. Box 39 Vienna, VA 22183

Submitted electronically via http://www.regulations.gov

RE: **Anti-Money Laundering Regulations for Real Estate Transactions**
Docket #: FINCEN-2021-0007; RIN: 1506-AB54; Document #: 2021-26549

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 an advanced notice of proposed rulemaking (ANPR) regarding potential anti-money laundering regulations for real estate transactions under the Bank Secrecy Act.

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

The FACT Coalition has long advocated for a comprehensive U.S. response to real estate-based money laundering, which cannot be adequately addressed by temporary Geographic Targeting Orders (GTOs) due to their limited scope and duration. We are heartened to see the Biden Administration moving to address the scourge of money laundering in the real estate sector as well as the commitment announced in the U.S. Strategy to Counter Corruption to promulgate "regulations targeting those closest to real estate transactions to reveal when real estate is used to hide ill-gotten cash or to launder criminal proceeds."[2]

As shown by many high-profile cases over the last several years, money laundering through U.S. real estate undermines our national security and empowers authoritarian regimes and undemocratic political practices around the world as it allows kleptocrats, oligarchs, and other

[1] A full list of FACT members is available at: https://thefactcoalition.org/about-us/coalition-members-and-supporters/.
[2] The White House, *U.S. Strategy on Countering Corruption*, December 2021. https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf.

politically exposed persons (PEPs) to park the proceeds of corruption and other illicit actively safely in U.S. real estate.[3] A recent report by Global Financial Integrity (GFI) found that more than $2.3 billion was laundered through U.S. real estate in cases reported between 2015 and 2020.[4] Eighty-two percent of those cases involved foreign sources of money, and more than 50 percent involved PEPs.

Beyond the foreign policy, national security, and anti-corruption aspects of addressing real estate-based money laundering, this phenomenon exacerbates economic inequality and affects the ability of ordinary Americans to find affordable housing. As the U.S. Strategy to Counter Corruption notes, money laundering through real estate "negatively impacts average citizens in the United States, tilting the economic playing field against working Americans, enabling criminals to flourish and foreign adversaries to subversively peddle their influence, perpetuating growth-dampening inequality, and *contributing to pricing out families from home ownership through real estate purchases.*"[5]

The Current Approach to Addressing Real Estate-Based Money Laundering Has Many Weaknesses

Currently, GTOs have many inherent shortcomings in addressing money-laundering through U.S. real estate markets, including:

1. The temporary nature of the GTOs, which creates an uncertain regulatory environment for potential reporting parties and deters investment by FinCEN to strengthen and automate reporting and by industry in compliance measures.
2. The limited geographic reach of the GTOs, which ignores evidence that real estate money laundering occurs nationwide. Money laundering risks go far beyond luxury markets, such as luxury condominiums in Manhattan or beach front homes Malibu, and the GFI report demonstrates that real estate money laundering happens across the United States. Instead, a regulatory regime that targets only specific real estate markets might drive dirty money to less transparent jurisdictions.
3. The current, arbitrary GTO threshold of $300,000, which ignores the fact that money laundering schemes can occur through the purchase and sale of multiple properties with lower values.
4. The limited focus of GTOs, which apply only to all-cash purchases made by specific legal vehicles and only require the beneficial ownership information of the buying entity. This

[3] See for example, Casey Michel, *American Kleptocracy: How the U.S. Created the Greatest Money Laundering Scheme in History,* St. Martin's Press, 2021.
[4] Acres of Money Laundering, Global Financial Integrity, August 2021. https://gfintegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream/.
[5] U.S. Strategy on Countering Corruption supra note 2.

limited approach ignores other real estate money laundering typologies, such as the use of trusts, the use of natural persons as third parties, risks resulting from overvaluation and undervaluation of properties, and schemes initiated by the seller.

5. The limited application of GTOs to only residential real estate, which leaves the commercial sector, including residential buildings with more than 4 units, completely opaque and vulnerable to money laundering activity. There are many recent cases of money laundering through commercial real estate. For example, the Justice Department has been pursuing forfeiture of commercial properties in the U.S. that are part of a multi-billion scheme involving Ukrainian oligarch Ilhor Kolomoiskly and his associates.[6]

Recommendations to Inform Future FinCEN Rulemaking

Given the weaknesses of the current approach and the scale of the problem, we therefore welcome the readiness of FinCEN to issue a nationwide and permanent rulemaking that provides more transparency in the real estate sector.

To address the problem of real estate money laundering in U.S. markets, FinCEN should promulgate general and traditional Anti-Money Laundering (AML) requirements, including Customer Due Diligence (CDD) and the filing of Suspicious Activity Reports (SARS) on persons involved in real estate transactions. If FinCEN chooses to instead propose a specific reporting requirement that would be an expansion of current GTO requirements, it should at a minimum propose a rule that includes the following elements:

1. A permanent and nationwide reporting regime.
2. No monetary reporting threshold for transactions.
3. Application of reporting obligations even with respect to 'transfers of ownership' that do not constitute a sale.
4. Application to both residential and commercial real estate. As the Global Financial Integrity submission in response to this ANPRM notes, FinCEN should provide usable definitions of "residential" and "commercial" real estate as the current definition provided in the GTOs creates confusion.
5. Cascading reporting obligations that apply to multiple real estate professionals, including title and escrow companies and agents, real estate agents and brokers, and real estate attorneys to ensure that a reporting requirement falls on at least one entity in each real estate transaction.

[6] "Justice Department Seeks Forfeiture of Third Commercial Property Purchased with Funds Misappropriated from PrivatBank in Ukraine", U.S. Department of Justice Press Release, December 30, 2021. https://www.justice.gov/opa/pr/justice-department-seeks-forfeiture-third-commercial-property-purchased-funds-misappropriated.

6. Reporting obligations that apply to legal entities, including trusts, foundations, and any other associations or entities, and natural persons to identify the true beneficial owner of the underlying property (or properties) taking into consideration a variety of real estate money-laundering typologies
7. Beneficial ownership reporting for both the buyer and seller, as well as information on source of funds, identification of Politically Exposed Persons (PEPs), and other key pieces of information on the transaction.
8. A clear definition of the terms "financed" and "non-financed" to the extent these terms are relied on in promulgating varying reporting requirements, at a minimum clarifying that "financed" transactions exclude any financing mechanisms that otherwise escape robust AML/CFT due diligence and reporting mechanisms.

For further information on how FinCEN should develop draft regulations to address real estate-based money laundering, **we would invite you to review the responses to this ANPRM by our coalition members Global Financial Integrity, Anti-Corruption Data Collective, and the Transparency International-US Office.**

We would like to commend you once again for your work to address the scourge of money laundering in the U.S. residential and commercial real estate sectors and appreciate the opportunity to comment. It is critical that the regulatory process moves forward in a deliberate but timely manner to address the national security, corruption, and other risks posed by real estate-based money laundering. Should you have any questions regarding this comment, please contact Erica Hanichak, Government Affairs Director, at ehanichak@thefactcoalition.org.

Sincerely,

Ian Gary, Executive Director

Erica Hanichak, Government Affairs Director