FACT COALITION
Financial Accountability & Corporate Transparency

April 16, 2024

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P.O. Box 39
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Submitted electronically via www.regulations.gov

Re: FinCEN NPRM Establishing Anti-Money Laundering Regulations for Residential Real Estate Transfers (Docket Number FINCEN–2024–0005; RIN 1506–AB54)

Dear Director Gacki,

On behalf of the Financial Accountability and Corporate Transparency (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 notice of proposed rulemaking (NPRM) to establish anti-money laundering (AML) regulations for certain residential real estate transfers.

FACT welcomes this long-overdue rulemaking to mitigate money laundering risks in the U.S. residential real estate sector. As described below, we believe FinCEN's proposal is well crafted to safeguard the U.S. real estate industry from illicit finance, reduce the volumes of dirty money now plaguing some real estate transfers, and prevent the rise of debilitating loopholes in anti-money laundering (AML) oversight within the sector.

In particular, we applaud the proposed rule's: **(1)** application of nationwide AML standards for residential real estate; **(2)** rejection of monetary thresholds for reporting, reducing opportunities for evasion; **(3)** orderly cascade of persons required to submit Real Estate Reports (RERs) based upon their activities not professions, ensuring that someone is always responsible for doing basic AML checks in residential real estate transactions; **(4)** inclusive definition of "real estate transfer" to include sales, purchases, and non-sale transfers of real estate, and any transfer of an ownership interest in a property; **(5)** application to a wide range of covered entities including corporations, trusts, certain pooled investment vehicles, and other entities posing high AML risks; and **(6)** calibrated balance between AML oversight and costs to business and minimizing the duplication of existing AML requirements.

At the same time, as described in further detail below, the proposed rule would benefit from further strengthening by taking the following steps:

- ❖ **Provide greater enforcement clarity**: *FACT's biggest concern with the proposed rule is that it is unclear how FinCEN plans to enforce these reporting requirements*. The proposed rule fails to require reporting professionals to verify whether another person in the cascade has filed the real estate report, meaning that filing could deliberately or negligently fall through the cracks without penalty. Critically, the proposed rule also does not explicitly identify the penalties for failing to file a RER or for filing an inaccurate RER. While it may be inferred that penalties would mirror those for violating Suspicious Activity Report (SAR) requirements, this should be made clear. (See Section VI on p. 22).
- ❖ **Improve the Real Estate Report to include information relevant to money laundering risks:** While FACT supports a modified BSA filing for real estate professionals, the RER as proposed falls short on information needed to appropriately mitigate money laundering risks. For instance, the proposal does not require professionals to verify the beneficial ownership details as provided by covered entities; assess whether a politically exposed person (PEP) may be participating in a transfer; or determine the source of funds provided by the transferee entity for the purchase. Those elements must be added to provide greater utility in money laundering prevention and investigations.
- ❖ **Address risks presented by partially financed transactions**: As written, the current proposed rule requires reporting on some but not all residential real estate transfers that are partially financed by a financial institution with existing due diligence requirements. This gap in coverage is a particular concern with respect to real estate pooled investment vehicles. FinCEN must make sure no loopholes allow shady real estate investors to hide behind a legitimate partner and evade reporting.
- ❖ **Cover commercial real estate**: FinCEN must take expeditious action to address money laundering risks in the opaque commercial real estate (CRE) sector. By stopping short of addressing those risks, this rule provides an arbitrage opportunity allowing criminals, kleptocrats, and adversaries to shift their illicit funds into "softer" targets in the high-value commercial real estate market, which is particularly vulnerable and eager for influxes of funds since the start of COVID. FinCEN must move forward with a

rulemaking to mitigate commercial real estate money laundering risks as soon as possible.

Until the rule is implemented, we urge FinCEN to at least maintain, if not expand, the GTO program for residential real estate. Likewise, FinCEN should contemplate similar GTO programs for commercial real estate.

Background

The 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.[1] FACT submitted comments during the Advanced Notice of Proposed Rulemaking (ANPRM), as did our member organizations, Global Financial Integrity, Transparency International U.S., the Anti-Corruption Data Collective, and RISE Economy.[2]

As we and our members stated in those comments, rules to cover money laundering through residential and commercial real estate are long overdue. A 2021 study by Global Financial Integrity showed that at least $2.3 billion was laundered through the approximately $50 trillion

[1] 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.

[2] FACT Coalition, "Letter Re: Anti-Money Laundering Regulations for Real Estate Transactions, Docket #: FINCEN-2021-0007; RIN: 1506-AB54; Document #: 2021-26549," FACT Coalition, February 18, 2022, https://thefactcoalition.org/wp-content/uploads/2022/02/FACT-Final-RE-ANPRM-submission.pdf; Lakshmi Kumar and Kaisa de Bel, "GFI Comment Submission to FinCEN on ANPRM to Curb Illicit Financial Flows in the US Real Estate Sector," Global Financial Integrity, February 22, 2022 (GFI Comment), https://gfintegrity.org/report/gfi-comment-submission-to-fincen-on-anprm-to-curb-illicit-financial-flows-in-the-us-real-estate-sector/; Gary Kalman and Scott Greytak, "TI-US Comment on ANPRM For Real Estate Sector Reporting Requirements to Curb Illicit Finance," Transparency International U.S. Office, February 2022, https://us.transparency.org/resource/ti-us-comment-on-anprm-for-real-estate-sector-reporting-requirements-to-curb-illicit-finance/; David Szakonyi and Zoë Reiter, "ACDC to FinCEN: Make U.S. Real Estate Market One of the Most Transparency in the World," Anti-Corruption Data Collective, February 22, 2022, https://acdatacollective.org/work/acdc-to-fincen-make-u-s-real-estate-market-one-of-the-most-transparent-in-the-world/; "Letter Re: Anti-Money Laundering Regulations for Real Estate Transactions, Docket #: FINCEN-2021-0007; RIN: 1506-AB54; Document #: 2021-26549," RISE Economy (formerly the California Reinvestment Coalition), February 2022, https://www.regulations.gov/comment/FINCEN-2021-0007-0126.

U.S. real estate sector between 2015 and 2020,[3] though Treasury Secretary Janet Yellen has acknowledged that "the real number is almost certainly much higher."[4]

To provide additional evidence of the severity of the problem, attached to this comment letter is an annex of cases of real estate money laundering that have occurred since the ANPRM was issued in December 2021, demonstrating the continued need for action by FinCEN to take action and finalize an AML rulemaking for the U.S. real estate sector. We ask for this annex to be included in the rulemaking record.

I. The Proposed Rule is a Major Step to Address Long-Standing Money Laundering Risks

Despite Real Estate Money Laundering Risks, Regulatory Gaps Persist (Question 15, 33, 44)

In its 2023 report, *A Welcome Mat for Corruption*, Transparency International U.S. compared the U.S. AML protections in the real estate market to 21 other jurisdictions, mostly in the OECD. "The United States is a singular outlier among surveyed countries," the report found, "with [AML] deficiencies that must be resolved in order to realistically provide a robust and effective framework for guarding the U.S. real estate sector."[5] International standard setters and assessors like the Financial Action Task Force have found U.S. AML controls for real estate to be deficient.[6]

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[3] 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 (Acres of Money Laundering), p. 4, https://gfintegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream/.

[4] Secretary Janet Yellen, "Remarks by Secretary Janet L. Yellen on Anti-Corruption as a Cornerstone of a Fair, Accountable, and Democratic Economy at the Summit for Democracy," U.S. Department of the Treasury, Secretary Statements & Remarks, Marc 28, 2023, https://home.treasury.gov/news/press-releases/jy1371.

[5] 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/.

[6] *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," last accessed April 15, 2024, 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.

Congress added AML program requirements for all financial institutions under the Bank Secrecy Act, including "persons involved in real estate closings and settlements," in the wake of the 9/11 terrorist attack in 2001.[7] However, in 2002, FinCEN provided a "temporary exemption" for real estate professionals which regrettably has remained in place since. In 2016, Treasury implemented "geographic targeting orders," or GTOs, to work with the title insurance industry to better identify the true owners behind entities involved in all-cash purchases of residential real estate in certain U.S. cities. Though temporary, these GTOs have been renewed and expanded several times, demonstrating their value in understanding money laundering through residential real estate.

Still, it is clear that GTOs are insufficient to address widespread money laundering risks: the study by Global Financial Integrity shows that of federal money laundering cases involving real estate between 2016 and 2021, nearly 61 percent involved transfers in non-GTO covered counties.[8] Further, the GTO program applied only to legal entity purchases of real estate. It did not examine transactions made by trusts[9] or other high-risk entities, nor did it require reporting for sellers or for non-traditional transfers, such as a gift. Likewise, the GTO program's cash thresholds have allowed lower-dollar transfers to evade disclosure. Several cases have been identified in which money was laundered through real estate transactions well below the reporting threshold.[10] As FinCEN notes, criminals do not "exclusively invest in luxury or high-value property, but also launder money through low-value real estate."[11] **Given this evidence, we commend FinCEN for moving forward with a nationwide rule, without cash thresholds, and with broad coverage of various types of real estate transfers.** We also appreciate FinCEN utilizing the definition of "residential property" used by the GTOs – meaning a property "designed principally for occupancy by one to four families" – as it is appropriately encompassing and is a clear industry standard.

[7] 31 U.S.C. 5312(a)(2)(U).
[8] Acres of Money Laundering, p. 26, https://gfintegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream.
[9] The GTO program apparently examined trusts in one 6 month period, but the program was not continued. GFI comment, p. 11, https://gfintegrity.org/report/gfi-comment-submission-to-fincen-on-anprm-to-curb-illicit-financial-flows-in-the-us-real-estate-sector/.
[10] Acres of Money Laundering, p. 35-36, https://gfintegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream.
[11] Department of the Treasury, Financial Crimes Enforcement Network, "Notice of proposed rulemaking: Anti-Money Laundering Regulations for Residential Real Estate Transfers," Federal Register, Vol. 89, No. 33, February 16, 2024 (NPRM), p. 12436. The GFI report demonstrates real estate money laundering purchases ranging from $200,000 to $500 million, including one case in which a Las Vegas real estate broker allegedly helped launder up to $250 million by purchasing and flipping homes – including one home valued at $220,000. See GFI Comment, p. 35-36, https://gfintegrity.org/report/gfi-comment-submission-to-fincen-on-anprm-to-curb-illicit-financial-flows-in-the-us-real-estate-sector/; *See also* United States Attorney's Office, Southern District of New York, "Anti-Money Laundering Regulations for Residential Real Estate Transfers," July 2, 2018, https://www.justice.gov/usao-sdny/pr/las-vegas-real-estate-broker-arrested-money-laundering-charges.

Current Industry Standards Do Not Address Money Laundering Risks (Questions 9-10, 18, 33)

In 2017, FinCEN issued an advisory encouraging actors in real estate transactions to voluntarily file Suspicious Activity Reports (SARs),[12] but it is unclear how effective that advisory has been.[13] In 2021, the National Association of Realtors issued voluntary AML guidelines for its members, but it is unclear how many real estate firms have adopted them, established AML programs, or created procedures for filing SARs.[14] The reality is that there is little incentive for real estate actors to spend extra time or resources on AML-related reports which are not required by regulation and where the extra work may put them at a competitive disadvantage. The lack of incentive to file SARs is further reinforced by the existing legal obligation of financial institutions expected to be on the lookout for money laundering risks and report suspicious activity. Moreover, voluntary disclosures do not lead to uniform information reports. Instituting uniform reporting AML obligations, as proposed in this rule, would improve participation in the real estate sector, standardize the information reported, and ultimately aid in providing tools that can be applied industry-wide, rather than piecemeal in specific situations.

Legal Entities and Trusts Exacerbate Money Laundering Risks in Real Estate (Questions 23, 33)

The proposed rule is appropriately focused on transfers to legal entities and trusts because they are a key typology for real estate money laundering. For instance, the 2021 report by Global Financial Integrity on money laundering cases revealed that 82 percent involved use of a legal entity to obscure ownership.[15] Most recently, the 2024 National Money Laundering Risk Assessment specifically calls out real estate as a risky money laundering methodology thanks to its value, stability, and ease of conducting anonymous transactions through LLCs, trusts, and pooled investment vehicles.[16]

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[12] Financial Crimes Enforcement Network (FinCEN), "Advisory to Financial Institutions and Real Estate Firms and Professionals," FinCEN Advisory Information, August 22, 2017, https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2017-a003.
[13] GFI Comment, p. 18. https://gfintegrity.org/report/gfi-comment-submission-to-fincen-on-anprm-to-curb-illicit-financial-flows-in-the-us-real-estate-sector/
[14] "Anti-Money Laundering Voluntary Guidelines for Real Estate Professionals," National Association of Realtors, February 16, 2021, https://www.nar.realtor/money-laundering-and-terrorism-financing/anti-money-laundering-voluntary-guidelines-for-real-estate-professionals.
[15] Acres of Money Laundering, p. 4, https://gfintegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream/.
[16] 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.

II. Proposed Rule Provides Significant Law Enforcement, National Security, and Economic Benefits

Proposed Rule Provides Law Enforcement New Tool for Investigation (Question 33, Regulatory Impact Assessment)

The RER would provide law enforcement with a useful new investigative tool similar to Suspicious Activity Reports (SARs) filed by financial institutions subject to customer due diligence obligations. Generally, AML-related reporting has proven helpful to law enforcement. In 2020, a report by the Government Accountability Office (GAO) documented the important role that SARs serve for U.S. law enforcement. It stated:

> 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.[17]

Likewise, FinCEN's director Andrea Gacki testified in February in the House Financial Services Committee about the value of this type of reporting, stating that FinCEN has heard from law enforcement that "certain suspicious activity reports by financial institutions" reportedly "have led to successful prosecutions." She also noted that, "there are a full range of enforcement and other actions like sanctions that could be taken based on critical tip and lead reporting that comes from suspicious activity."[18] While these reports are not filed using the discretionary judgment of the real estate professional, they do include information similar to a SAR that would be helpful for law enforcement investigations. This reporting is crucial to mitigate money laundering risks in U.S. real estate.

Proposed Rule Provides National Security Benefits (Question 33, Regulatory Impact Assessment)

In addition to diminishing access for would-be money launderers to the U.S. residential real estate sector, the proposed rule would serve a strong national security purpose by helping deter

[17] 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.
[18] Testimony by Andrea Gacki, FinCEN Director in the House Financial Services Committee, "Hearing: Oversight of the Financial Crimes Enforcement Network (FinCEN) and Office of Terrorism and Financial Intelligence (TFI)," February 14, 2024, https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=409139.

sanctions evaders and foreign corrupt actors from using the U.S. market to hide the proceeds of crimes which directly and indirectly affect U.S. national security interests. For example:

- ❖ High-ranking Mexican officials, such as former Veracruz governor Javier Duarte, allegedly used lawyers and business associates to set up a network of shell companies. Accused of embezzling $26 million and fostering ties with drug cartels, he allegedly then used these companies to disguise the origins of ill-gotten gains by purchasing real estate in the U.S., including a Miami mansion and around 30 Miami homes.[19]
- ❖ 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.[20]
- ❖ Paul Manafort used U.S. real estate to launder money made advising a pro-Russian regime in Ukraine. He used offshore accounts, mostly in Cyprus, and a web of shell companies to make the purchases, which included a $2.85 million condominium, which he subsequently borrowed against.[21]

These instances demonstrate the risk to national security: whether through narco-corruption that jeopardizes public health, the courts, law enforcement, and other public institutions; criminal proceeds that strengthen organized crime syndicates while fueling lawlessness and instability; or sanctions evasion that enriches U.S. adversaries and endangers global democracy and U.S. national security objectives. FACT testified in the Senate this month that, "U.S. sanctions policy pursued without parallel steps to close anti-money laundering loopholes is at best, wishful thinking, and at worst, a farce."[22] This proposed rule provides the first step of closing the real estate loophole used by so many corrupt actors to launder ill-gotten gains.

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[19] Acres of Money Laundering, p. 30, https://gfintegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream/; Peniley Ramírez, Gerardo Reyes, Juan Cooper and Sergio Rincón, "How former Mexican governors used the United States to embezzle billions of dollars," Univision News, June 21, 2017, https://www.univision.com/univision-news/latin-america/how-former-mexican-governors-used-the-united-states-to-embezzle-billions-of-dollars; Jonathan Levin and Nacha Cattan, "Ex-Mexico Governor Sued for Funneling Cash Into Miami Homes," Bloomberg, March 13, 2018, https://www.bloomberg.com/politics/articles/2018-03-13/ex-mexico-governor-sued-for-funneling-cash-into-miami-homes.

[20] Acres of Money Laundering, 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, 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/.

[21] Acres of Money Laundering, p. 29, https://gfintegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream/.

[22] Testimony by Erica Hanichak, FACT Coalition, "Hearing: Opaque Shell Entities: A Risk to National Security, Public Health, and Rule of Law," U.S. Senate Caucus on International Narcotics Control, April 9, 2024, https://www.drugcaucus.senate.gov/hearings/opaque-shell-companies-a-risk-to-national-security-public-health-and-rule-of-law/.

Proposed Rule Provides Economic Benefits by Addressing Market Distortions, Protecting Tenants (Question 24, Regulatory Impact Assessment)

While difficult to quantify, we share the proposed rule's assessment that money laundering through residential real estate drives market distortions, both in terms of pricing and supply of affordable housing. The NPRM notes, "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."[23] Regarding pricing, we have seen troubling evidence in comparable economic jurisdictions. Consider:

- A 2019 study in the Canadian province of British Columbia found that REML resulted in estimated price increases of between 3.7 percent to 7.5 percent.[24]
- In another report from British Columbia in 2022, the commissioner of the report noted that, while the report was unable to determine conclusively that REML was a significant cause of unaffordability in the real estate market, he noted that attempts to quantify the price impact, "do provide some insight into the order of magnitude of the problem, and they suggest it is massive."[25]
- A 2022 study in Italian provincial markets determined that REML "creates an upwards distortion in the housing market prices."[26]
- In 2015, the UK's National Crime Agency stated its belief that "the London property market has been skewed by laundered money."[27]

Distortionary effects of money laundering on the housing supply may further contribute to higher prices. There is already an overwhelming inflow of cash into the real estate sector that is incentivizing developers to prioritize luxury real estate properties for the wealthy elite over affordable housing that is accessible by average Americans. Massive flows of dirty cash into U.S. residential real estate likely only exacerbate this problem. A drop in the supply of affordable housing only creates upward pressure on prices.

Finally, there are transfers covered by this rule – for instance, large commercial purchases of residential real estate – that impact Americans who rent properties. Money launderers often do

[23] NPRM, p. 12446.
[24] Professor Maureen Maloney, Professor Tsur Somerville, Professor Brigitte Unger, "Combatting Money Laundering in BC Real Estate" Expert Panel on Money Laundering in BC Real Estate, March 31, 2019 (Combatting Money Laundering in BC Real Estate), https://news.gov.bc.ca/files/Combatting_Money_Laundering_Report.pdf, p. 57.
[25] Cullen Commission, p. 146.
[26] Riccardo Novaro, Massimiliano Piacenza, Gilberto Turati, "Does money laundering inflate residential house prices? Evidence from the Italian provincial markets," International Review for Social Sciences, Vol. 75(4), November 2022, 672, at p. 672.
[27] Damien Gayle, "Foreign criminals use London housing market to launder billions of pounds," The Guardian, July 25, 2015, https://www.theguardian.com/uk-news/2015/jul/25/london-housing-market-launder-offshore-tax-havens.

not make for good landlords, and may allow the deterioration of properties and evict rent controlled tenants without fear of repercussions. These are not hypothetical risks. Consider the following issues with anonymity and money laundering in rented residential housing:

- ❖ Midwestern politicians, including the head of the board of aldermen in Saint Louis, have acknowledged the affordable housing issues that entity anonymity causes. The St. Louis board member put it this way: "One of the challenges we've had in the city for a long time is we can't get in contact with problematic landlords…A lot of times properties are registered to out of town LLCs that then only have a P.O. box. So when there's issues, it's very difficult to be able to track someone down and have a conversation."[28]
- ❖ Honduran national Carlos Zelaya utilized shell companies to launder bribe payments through real estate in the New Orleans area.[29] Zelaya purchased nine residential and commercial properties between January and November 2012,[30] renting out several of the residential properties and collecting passive income from his illicitly purchased residences, without any incentive to be a responsive landlord.
- ❖ At the extreme end, REML can even drive negligence that has lethal consequences. In June 2021, Champlain Towers South, a twelve story condominium in Surfside, Florida, partially collapsed, causing the deaths of 98 people. Later, an investigation uncovered murky details surrounding both its construction and its tenants, suggesting a link between illicit money and its poor construction and maintenance.[31] While that was a commercial property that would not be covered under the rule as proposed, this example demonstrates what's at stake for tenants subject to poor conditions fueled by money laundering.

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[28] Eric Schmid, "St. Louis is looking to update many of its housing policies to prioritize tenants," St. Louis Public Radio, August 25, 2023, https://www.stlpr.org/economy-business/2023-08-25/st-louis-is-looking-to-update-many-of-its-housing-policies-to-prioritize-tenants.

[29] Lucy Papachristou, "US Court Sentences Honduran Man for Money Laundering," Organized Crime and Corruption Reporting Project, October 4, 2018, https://www.occrp.org/en/daily/8694-us-court-sentences-honduran-man-for-money-laundering.

[30] "Verified Complaint for Forfeiture in Rem," United States of America v. Real Property Located At 1404 North Highway 190, Covington, Louisiana 70433 and Ors., 2:15-CV-00074, United States District Court for the Eastern District of Louisiana, January 13, 2015, https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/01/13/zelaya_forfeiture_complaint_1.pdf.

[31] Chris Davis, "The Backstory: Long before the Champlain Towers collapse, there was money laundering. Here's how we uncovered it," USA Today, October 22, 2021, https://www.usatoday.com/story/opinion/2021/10/22/there-was-money-laundering-surfside-heres-how-we-uncovered-it/8532276002/.

Proposed Rule Would Not Make It Harder for Average Americans to Buy a Home (Questions 2, 14)

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 constituted only 13 percent of buyers in that period, whereas trusts proved to be an even smaller fraction – 3.3 percent.[32]

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.[33] Those that did make an all-cash purchase were most often buying a vacation home or were acting as a real estate investor.[34] 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.

III. Cascade Reduces Chances of Evasion, Mitigates Reporting Costs

Cascade Includes Appropriate Professionals to Address Money Laundering Risks (Questions 3, 5, 6)

The cascade system proposed by the NPRM is an effective, proportionate, and efficient approach to ensuring RER reporting takes place while preventing reporting loopholes. Crafting the cascade based on the functions performed during real estate transactions is easy-to-understand, practical, and useful in preventing arbitrage: it is easier to avoid including a certain professional than to circumvent the usual procedural steps required in a residential real estate transaction. In addition, as there is no uniform approach within the United States as to who must be involved in a U.S.

[32] 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.
[33] 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.
[34] Id.

real estate transaction,[35] the cascade provides a workable approach in all situations. Further, the cascade reduces costs by avoiding duplication of effort, helps ensure consistency across state lines, and aids fairness in the reporting process.

Through its "functional" approach, the cascade would cover appropriate real estate professionals and provide needed flexibility in the wide variety of residential real estate transactions that occur in the United States. GFI's 2021 Comment provides useful analysis of the types of real estate professionals that could be captured in the cascade, demonstrating the lack of uniformity across the country and the flexibility required to cover U.S. residential real estate transactions:[36]

- ❖ Title insurance is used in up to 85 percent of U.S. real estate transactions, though not mandatory in law. However, even though it is often required by lenders, it is not always required in non-financed transactions. So even though a very high percentage of residential real estate transactions involve services rendered by title insurance companies, not all do, necessitating other options for RER reporting.
- ❖ Attorneys are commonly involved in real estate closings, deed drafting, or the release of funds, and in some states are required to be a part of a residential real estate transaction process at some point. Yet, not all states require the presence of an attorney for residential real estate transactions, and in cross-border transactions, the attorney will sometimes be an overseas firm, not governed by U.S. laws or regulations.
- ❖ Persons that distribute funds to complete a residential real estate transaction, such as from an escrow account, trust account, or lawyer's account, are common, particularly in cross-border transactions, and are often in a good position to identify the source of funds. But those persons are not present in all residential real estate transactions.

Each of these scenarios addresses a function and associated professionals commonly involved in U.S. real estate transactions. Since all would be covered by the proposed cascade, the cascade approach would provide a level of consistency and reliability in the RER reporting process.

Attorneys Are Appropriately Included in the Cascade (Questions 19, 20, 22)

We welcome FinCEN's explicit inclusion of attorneys in the cascade, as attorneys are often involved in closing agreements, escrow payments, and other aspects of U.S. residential real estate transactions for instance by filing a deed. Many of these services involve administrative functions, require no legal advice, and can be performed by non-lawyers. But a study by Global Financial Integrity of closing agreements showed that attorneys were the single most common

[35] GFI Comment, p. 42. https://gfintegrity.org/report/gfi-comment-submission-to-fincen-on-anprm-to-curb-illicit-financial-flows-in-the-us-real-estate-sector/
[36] Ibid, p. 38.

professional involved in real estate closings across the country, in part because some states require the participation of attorneys in real estate closings, the only real estate professionals to enjoy that mandatory status.[37] Likewise, attorneys often are hired to establish the corporations, LLCs, trusts, or other entities sometimes used in residential real estate transactions and therefore may be best positioned to know the client requesting those services and obtain required information from or about that client. In *Acres of Money Laundering*, at least 35 percent of all REML cases analyzed used a lawyer as part of their schemes.[38]

In addition, attorneys often use special accounts – Interest on Lawyers' Trust Accounts, or IOLTAs – that only licensed attorneys may open to accept, escrow, or transfer funds on behalf of clients on a short-term basis.[39] In U.S. residential real estate transactions, IOLTA accounts may be used as a means to transfer funds for a non-financed or partially-financed real estate purchase, and introduce risk as these accounts effectively anonymize the origin of the funds that flow into a real estate transaction. Lawyers who facilitate such funding transactions are, again, best positioned to know the client requesting the transaction and obtain information from or about that client. In doing so, attorneys can help mitigate some of the money laundering risk associated with IOLTA transfers.

To understand how accounts controlled by attorneys may become conduits for suspect funds, consider this recent case. In March 2024, the Department of Justice filed a civil forfeiture action against property purportedly belonging to Claudia Sassou Nguesso, daughter of the president of the Republic of the Congo.[40] The complaint claims that Sassou Nguesso used funds embezzled from Congolese state coffers to purchase a $7.1 million condo in New York, and that the family's middleman engaged the U.S. law firm K&L Gates to form a New York-based entity to serve as the nominee purchaser of the property. To finalize the purchase, a Cyprus-based legal entity sent the remaining $6.5 million to an account at K&L Gates, which wired the funds to a title insurance company. That company then completed the sale by directing the sum to the seller's law firm.[41]

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[37] *In at least 7 states, it is legally required for an attorney to conduct the closing. In at least 10 states, attorneys do not have to conduct the closing, but must be involved in the preparation of certain documents (like deeds or financing instruments) or certifying title*. See GFI Comment, p. 13.

[38] Acres of Money Laundering, p. 20, https://gfintegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream/.

[39] *All 50 states authorize lawyers to open IOLTA accounts. For more information, see American Bar Association*, *"Overview," last accessed April 15, 2024,* https://www.americanbar.org/groups/interest_lawyers_trust_accounts/overview/.

[40] U.S. Department of Justice, "United States of America v. Real Property Located at 1 Central Park West, Unit 32G, New York, New York, 10023," Civil Forfeiture Complaint, March 29, 2024, https://www.documentcloud.org/documents/24527071-sassou-nguesso-trump-condo; See also, Nicole Sadek, "US prosecutors push to seize apartment tied to Congolese president in luxury Trump complex," ICIJ, March 29, 2024, https://www.icij.org/investigations/pandora-papers/us-prosecutors-push-to-seize-apartment-tied-to-congolese-president-in-luxury-trump-complex/.

[41] Id.

Because most of the services provided by attorneys in U.S. real estate transactions and the information required in the RER do not constitute legal advice, they are outside the scope of legal professional privilege. We support FinCEN's approach to "require reporting by attorneys only when they perform certain functions—functions that generally may be performed by non-attorneys."[42] As examined in a memo by Transparency International U.S., most services required in residential real estate transactions can generally be performed by non-attorneys, and therefore do not require the unique legal expertise of a lawyer.[43]

We strongly agree that "the same reporting obligations should apply to attorneys and non-attorneys alike when they perform the same functions in reportable transfers of residential real property."[44] As we state above, **creating uniform obligations based on functions, not professions, mitigates the opportunities for structuring residential real estate transactions to evade RER filing. Exempting attorneys from the proposed rule would only increase risks that wrongdoers would turn to attorneys to conceal or advance their money laundering schemes.**[45]

FinCEN Should Prohibit Self-Reporting by Transferors and Transferees

FinCEN should anticipate and clarify its expectations in instances in which a real estate professional who would normally file an RER is an immediate party to the transfer, or otherwise is a beneficial owner of an entity or trust involved in the transfer. In those cases, the final rule should address the conflict of interest by providing that another professional in the cascade must assume reporting responsibilities. Particularly troubling is the statement in the proposed rule that lists the final person in the cascade as the "person who prepares the deed" and notes that this person may be the transferee itself.

We recommend that the final rule exclude the transferor and transferee from being eligible to be a reporting person because of the clear conflict of interest. For instance, a transferee with illicit intent could prepare the deed and then volunteer to file the report under a designation agreement.

[42] NPRM, p. 12439.
[43] Scott Greytak, "The Compatibility of Proposed AML Requirements with Existing Legal Ethics Rules," Transparency International U.S. Office, October 28, 2022, https://us.transparency.org/resource/enablers-act-the-compatibility-of-proposed-aml-requirements-with-existing-legal-ethics-rules/.
[44] NPRM, p. 12438-12439.
[45] *Attorneys have unfortunately facilitated money laundering in the real estate field in the past. See, e.g.,* U.S. Attorney's Office, Southern District of New York, "New York Attorney Pleads Guilty To Conspiring To Commit Money Laundering To Promote Sanctions Violations By Associate Of Sanctioned Russian Oligarch," April 25, 2023, https://www.justice.gov/usao-sdny/pr/new-york-attorney-pleads-guilty-conspiring-commit-money-laundering-promote-sanctions.

The other parties in the cascade would have a time-saving incentive to agree to the designation and not ask questions. The transferee could then provide misleading or false information in the report. Of course, a designation agreement naming the transferee as the person filing the RER would in itself be a red flag, but since the designation agreement is not part of the report, that red flag would not reach FinCEN.

IV. FinCEN Adequately Defines Transferor and Transferee Entities, Trusts and Reportable Transfers (Questions 14, 23, 25-26, 30)

Final Rule Must Address ML Risks Through Trusts, Other High-Risk Exemptions

The proposed rule appropriately requires real estate reports to be filed in certain transfers that present high-risk for money laundering: particularly those involving trusts and pooled investment vehicles. The proposed rule likewise appropriately covers nonprofits. In each case, these entities are largely exempt from the Corporate Transparency Act – which requires certain entities to disclose their true owner to a secure directory at FinCEN – and so pose increased money laundering risks due to the secrecy around their beneficial owners.[46]

- **Trusts**: The 2021 Pandora Papers exposé revealed how much the U.S. trust industry has become a conduit for questionable funds to be brought into and moved through the U.S. financial system.[47] Likewise, we have seen trusts play a significant role in REML. Consider the case of Yahya Jammeh, the former president of Gambia, who bought a $3.5 million mansion in Maryland through a trust in his wife's name allegedly using corruption proceeds.[48] In another case, the brother of the president of the Democratic Republic of the Congo, Francis Selemani, purportedly moved diverted Congolese government funds through U.S. trusts into more than several millions of dollars' worth in U.S. real estate: his purchases included a $1.38 million townhouse in the Grosvenor neighborhood near Washington D.C.[49] While one nonpublic GTO in 2017 included trusts

[46] FACT raised concerns during the CTA rulemaking that these exemptions presented increased risks of money laundering. FACT Coalition, "Beneficial Ownership Information Reporting Requirements, Docket #:FINCEN-2021-0005; RIN: 1506-AB49; Document #: 2021-06922," May 5, 2021, p. 65 (trusts); p. 33-34, 43-47 (nonprofits); and 47-51 (PIVs), https://thefactcoalition.org/wp-content/uploads/2021/05/FACT-CTA-ANPRM-Comment-20210505-0329am-FINAL.pdf.

[47] International Consortium of Investigative Journalists, "The Pandora Papers," October 2021, https://www.icij.org/investigations/pandora-papers. *You can reference a summary of key findings* Erica Hanichak, "Transparency is the Prize in the Post-Pandora Papers Scramble," FACT Coalition, October 12, 2021, https://thefactcoalition.org/transparency-is-the-prize-in-post-pandora-papers-scramble.

[48] U.S. Department of Justice, "Justice Department Secures Forfeiture of Maryland Property Purchased with $3.5 Million in Alleged Corruption Proceeds Linked to Ex-President of The Gambia," Press Release, May 26, 2022, https://www.justice.gov/opa/pr/justice-department-secures-forfeiture-maryland-property-purchased-35-million-alleged.

[49] The Sentry, "Embezzled Empire: How Kabila's Brother Stashed Millions in Overseas Properties," November 2021, p. 10, https://thesentry.org/wp-content/uploads/2021/11/EmbezzledEmpire-TheSentry-Nov2021.pdf.

in its six-month extension, the overall GTO program did not address the money laundering risks of trusts.[50] Trusts are not just a helpful tool for estate planning: the financial secrecy they afford is ripe for abuse by criminals and kleptocrats. That is why this proposed rule must include trusts as covered entities to be effective.

- **Pooled Investment Vehicles**: The rule, as proposed, currently covers transfers to unregistered investment companies, including private funds, certain market intermediaries, and certain companies that primarily engage in the business of acquiring mortgages.[51] Private equity firms and corporate landlords are increasingly buying record numbers of properties – estimates point to as much as 40 percent by 2030.[52] It is appropriate that FinCEN require reporting for these ventures given their outsized role in the market as well as their current money laundering risk, as evidenced in the Treasury Department's 2024 Investment Adviser Risk Assessment.[53] Take, for instance, a case from 2014 in which a now-sanctioned Cyprus resident, Demitris Ioannides, and his relatives reportedly became the largest investors in an otherwise ordinary four-story mixed residential and commercial building in Queens. In concert with private equity firm Triena Capital Partners, Ioannides moved money – largely amassed by moving questionable funds out of Russia – through shell companies in the British Virgin Islands.[54] The separate FinCEN rulemaking to address these risks, which we support, will help to streamline compliance. This category is discussed further in pp. 21-22 of this comment.

- **Nonprofits**: While the vast majority of nonprofits are law abiding, both the Financial Action Task Force and FinCEN itself have recognized that nonprofits can present a money laundering risk.[55] Existing U.S. AML provisions account for this risk: when a

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[50] GFI comment, p. 11, https://gfintegrity.org/report/gfi-comment-submission-to-fincen-on-anprm-to-curb-illicit-financial-flows-in-the-us-real-estate-sector/.
[51] NPRM, p. 12,434.
[52] Carlos Waters, "Wall Street has purchased hundreds of thousands of single-family homes since the Great Recession. Here's what that means for rental prices," CNBC, February 21, 2023, https://www.cnbc.com/2023/02/21/how-wall-street-bought-single-family-homes-and-put-them-up-for-rent.html. *See also,* Kevin Schaul and Jonathan O'Connell, "Investors bought a record share of homes in 2021. See where," Washington Post, February 16, 2022, https://www.washingtonpost.com/business/interactive/2022/housing-market-investors.
[53] U.S. Department of Treasury, "2024 Investment Adviser Risk Assessment," February 2024, https://home.treasury.gov/system/files/136/US-Sectoral-Illicit-Finance-Risk-Assessment-Investment-Advisers.pdf.
[54] Spencer Woodman, "Oligarchs' Fixer Made Fortune From New York Apartment Building," ICIJ, November 15, 2023, https://www.icij.org/investigations/cyprus-confidential/new-york-property-real-estate-cyprus-financial-services.
[55] Financial Crimes Enforcement Network (FinCEN), "Joint Fact Sheet on Bank Secrecy Act Due Diligence Requirements for Charities and Non-Profit Organizations," November 19, 2020, https://www.fincen.gov/sites/default/files/shared/Charities%20Fact%20Sheet%2011_19_20.pdf. *See also,* Financial Action Task Force (FATF), "Best Practices: Combating The Abuse Of Non-Profit Organisations (Recommendation 8)," June 2015, https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/BPP-combating-abuse-non-profit-organisations.pdf.coredownload.pdf.

nonprofit organization opens an account at a bank, it is subject to the bank's CDD checks, identical to those required of for-profit entities. The approach FinCEN takes here is no different. Requiring filing for transfers involving nonprofits just as is required of any other entity prevents arbitrage for would-be money launderers to move their schemes into the charitable sector.

Coverage of Foreign Entities, Foreign Trusts Crucial For Addressing Money Laundering Risks (Question 43)

We applaud the proposed rule for covering both U.S. as well as foreign entities and trusts. 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.[56] As noted in the NPRM,[57] 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.[58] **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 between 25 and 30 percent of all purchases, with foreign buyers at 39 percent all-cash.[59] (Note however, that this estimate was "all-cash" and not "non-financed.")

It is particularly important for this rule to cover foreign entities and trusts, because otherwise, these transactions may entirely escape AML scrutiny. For instance, in March 2024, the Department of Justice filed a civil complaint to seize New York residential properties, worth $14 million, purportedly owned by former Mongolian Prime Minister Sukhbaatar Batbold through a series of shell companies.[60] The complaint alleges that Batbold used a portion of $68 million he received through unlawfully awarded mining contracts to make the real estate purchases.[61] In May 2022, the Department of Justice filed a civil forfeiture complaint to seize a mega-mansion in Los Angeles that it alleges was purchased using a trust that held tens of

[56] Acres of Money Laundering, p.24, https://gfintegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream.
[57] NPRM p. 12,430.
[58] 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.
[59] GFI Comment, p. 15, https://gfintegrity.org/report/gfi-comment-submission-to-fincen-on-anprm-to-curb-illicit-financial-flows-in-the-us-real-estate-sector/.
[60] Dylan Tokar, "Former Mongolian Prime Minister's Luxury Manhattan Apartments Targeted by U.S.," Wall Street Journal, March 26, 2024, https://www.wsj.com/articles/former-mongolian-prime-ministers-luxury-manhattan-apartments-targeted-by-prosecutors-4ee612af
[61] U.S. Department of Justice, "United States Seeks Forfeiture of Former Mongolian Prime Minister's Luxury New York City Apartments Purchased with Proceeds of Corruption Scheme," Press Release, March 26, 2024, https://www.justice.gov/usao-edny/pr/united-states-seeks-forfeiture-former-mongolian-prime-ministers-luxury-new-york-city.

millions of dollars of bribe money laundered through fraudulent private loans, to the family of Armenian "super minister" Gagik Khachatryan.[62] In some cases, the only U.S. financial touch point for a foreign entity or trust may be through real estate purchase, meaning that these transactions may not run through another industry that has AML/CFT obligations. As such, there is complete opacity around foreign entity ownership of U.S. real estate, only compounding risks that money invested in U.S. real estate may be enabling global corruption or undermining U.S. national security. FinCEN should maintain coverage of all proposed entities and trusts, regardless of whether they are domiciled or registered in the United States.

Reporting Is Appropriately Triggered by Any Ownership Transfer in a Residential Real Property

We welcome the proposed rule's inclusive coverage of what is considered a reportable transfer, to include the sale, purchase, and non-sale transfer of residential real property. This step addresses shortcomings in the GTOs, which only covered real estate purchases. In particular, we welcome coverage of non-sale transfers of real estate. In this scenario, the title may shift to a new owner, without any purchase or sale. This is not a hypothetical risk. Allegedly as a means to evade sanctions for their Russian oligarch client, a Miami real estate agent and law firm transferred the title of two properties valued at $2.5 million to an LLC created and put into the name of Perevalov's relative who was a minor.[63] There was no apparent exchange of funds – instead, the ownership simply changed. In another example, Nirav Modi bought two New York apartments – each worth millions of dollars – for him and his wife allegedly using funds scammed from Punjabi National Bank. For one property, a company tied to Modi allegedly made the purchase, then after several years purportedly transferred ownership of the property to a trust held by his wife before the scandal came to light.[64]

We also welcome the rule's definition of a reportable transfer to include "a transfer of ***any*** ownership interest in residential real property" (emphasis added).[65] This language is crucial to encompass the many ways that wrongdoers structure real estate transactions to avoid scrutiny and law enforcement. We encourage FinCEN to provide in the final rule a non-exhaustive list of possible residential real estate transfers that are intended to be subject to RER reporting. This list

[62] U.S. Department of Justice, "Justice Department Seeks Forfeiture of Los Angeles Mega-Mansion Allegedly Purchased with Proceeds of Armenian Corruption Scheme," Press Release, May 5, 2022, https://www.justice.gov/usao-cdca/pr/justice-department-seeks-forfeiture-los-angeles-mega-mansion-allegedly-purchased. *See also,* The Guardian, "US to seize $63m Los Angeles mansion it claims was bought with bribe money," May 6, 2022, https://www.theguardian.com/us-news/2022/may/06/us-los-angeles-mansion-armenia-bribe.
[63] U.S. Department of Justice, "Task Force KleptoCapture Announces Array of New Charges, Arrests, and Forfeiture Proceedings in Advance of Second Anniversary of Illegal Invasion of Ukraine," Press Release, February 22, 2024, https://www.justice.gov/opa/pr/task-force-kleptocapture-announces-array-new-charges-arrests-and-forfeiture-proceedings.
[64] Anuj Srivas, "Months Before PNB Scam Blew Up, Nirav Modi Bought Property for Family in New York," The Wire, September 1, 2018, https://thewire.in/business/pnb-scam-nirav-modi-mehul-choksi.
[65] NPRM p. 12,435.

should include any transfer of ownership and any creation of an equitable interest – whether in whole or in part, directly or indirectly – in the property.

We are concerned by the potentially overbroad exceptions for "transfer[s] resulting from the death of an owner of residential real property" and "transfer[s] incident to divorce or dissolution of a marriage" which could open the door to loopholes for money laundering whenever there is a death or divorce. To narrow the opportunities for wrongdoing, we recommend limiting the exception to "transfers to one or more family members or heirs pursuant to divorce or probate proceedings or the terms of a will or testament."

V. Effective Definition of "Financed Transaction," But Need to Clarify Coverage of Partially Financed Transactions

FinCEN Appropriately Defines "Financed Transactions" to Prevent Duplication of AML Reporting While Addressing Money Laundering Risks (Questions 11, 12)

In general, we support FinCEN's definition of "financed transaction," in which credit is extended for a real estate property by a financial institution that has a relationship with the client and has performed the requisite customer due diligence checks. We believe this approach threads the needle well to ensure that costs of AML compliance are not unnecessarily duplicated while also mitigating tangible money laundering risks.

We also applaud FinCEN for requiring reporting for certain transfers financed by a private lender or by the seller.[66] As the proposed rule notes, these transfers do not intersect with financial institutions that have anti-money laundering due diligence obligations, and therefore are higher risk. Again, in the case of Gagik Khachatryan, the alleged bribery proceeds were disguised as private loans to a web of legal entities which he then used to buy a Los Angeles mansion.[67] This case study shows how foreign oligarchs and politically exposed persons can take private loans or loans from banks in their own countries to purchase U.S. real estate, knowing their lenders will not raise any money laundering concerns. It also demonstrates the wisdom of the proposed rule in subjecting such transactions to U.S. AML reporting.

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[66] NPRM p. 12,435.

[67] U.S. Department of Justice, "Justice Department Seeks Forfeiture of Los Angeles Mega-Mansion Allegedly Purchased with Proceeds of Armenian Corruption Scheme," Press Release, May 5, 2022, https://www.justice.gov/usao-cdca/pr/justice-department-seeks-forfeiture-los-angeles-mega-mansion-allegedly-purchased. *See also,* The Guardian, "US to seize $63m Los Angeles mansion it claims was bought with bribe money," May 6, 2022, https://www.theguardian.com/us-news/2022/may/06/us-los-angeles-mansion-armenia-bribe.

At the same time, the final rule should correct what may be a typo in how it presents the exception for financed transfers. The proposed rule's preamble defines the exception for financed transfers as applying "*only* if the credit is secured by the transferred residential real property and is extended by a financial institution that has *both an obligation to maintain an AML program* and a *requirement to file SARs*" (emphasis added).[68] However, the proposed regulatory text at § 1031.320(b)(1) is not as clear.[69] In that section, the text describes three categories of reportable transfers covered by the rule in subsections (i) to (iii): real property, vacant or unimproved land, and shares in a cooperative housing corporation, respectively, before outlining the exception. But the language of the exception is currently placed in subsection (iii) without any comma, line break or other indication that the exception also applies to subsections (i) and (ii). The preamble clearly indicates that the exception is intended to apply to all three subsections (i) to (iii), and the final rule should clarify that intention in the final regulatory text.

We suggest the following amendment which would not change the text of the exception but would clarify the clause numbering to apply the exception as intended:

> (b) *Reportable transfer*. (1) Except as set forth in paragraph (b)(2) of this section, a reportable transfer is
>
> ***(i)*** a transfer to a transferee entity or transferee trust of an ownership interest in:
>
> > ***(A)*** Real property located in the United States containing a structure designed principally for occupancy by one to four families;
> >
> > ***(B)*** 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; or
> >
> > ***(C)*** Shares in a cooperative housing corporation***;***
>
> ***(ii)*** where such transfer does not involve an extension of credit to all transferees that is:
>
> > (A) Secured by the transferred residential real property; and
> >
> > (B) Extended by a financial institution that has both an obligation to maintain an anti-money laundering program and an obligation to report suspicious transactions under this chapter.

[68] NPRM p. 12,435.
[69] NPRM p. 12,466.

Final Rule Should Clarify that Partially Financed Transactions Are Reportable Transfers (Questions 13, 23, 48-49)

One problem is that the proposed rule does not clearly cover instances in which transactions may be partially financed, creating potential avenues for evasion of reporting obligations.[70] In those cases, purchasing structures may be layered and rely on financing from multiple sources, only some of which may be financed by financial institutions with AML obligations. In those instances, the financial institution will likely perform a due diligence review only on their own client, which can then go on to form a joint venture with other persons whose source of funds may be less reputable. Once pooled in the acquisition vehicle, legitimate and suspect funds are commingled and can be used to buy real estate properties, all the while evading both the proposed rule and traditional anti-money laundering safeguards. While a complex structure and multiple funding sources may be less likely for the purchase of a single family home, they could be used in high-end purchases and large corporate purchases of residential real estate (which appear to be covered by the proposed rule), posing significant money laundering risks.

As FinCEN has already noted, pooled investment vehicles present a significant REML risk. In a 2023 alert, FinCEN recognized the sanctions evasion risk they presented in real estate (albeit commercial real estate, or CRE), stating: “CRE investors seeking to evade sanctions, including sanctioned Russian elites and their proxies, may use pooled investment vehicles, including offshore funds, in order to avoid CDD and beneficial ownership protocols established by financial institutions, thereby allowing them to evade detection.”[71] There is evidence of these opaque structures concealing suspect funds:

- ❖ As part of the 1MDB scandal, a major real estate investment firm partnered with a shell company owned by Jho Low to purchase a hotel overlooking Central Park in New York. The investment firm obtained a mortgage from Wells Fargo without raising red flags for the transaction.[72]
- ❖ A boutique investment firm, Sefira Capital, laundered more than $100 million in narcotics proceeds through high-end residential and commercial real estate, including apartment complexes in Georgia. When investing, Sefira apparently ignored discrepancies between the supposed investment amount and the actual amount Sefira

[70] GFI comment, p. 9, https://gfintegrity.org/report/gfi-comment-submission-to-fincen-on-anprm-to-curb-illicit-financial-flows-in-the-us-real-estate-sector/.
[71] Financial Crimes Enforcement Network (FinCEN), “FinCEN Alert: FinCEN Alert on Potential U.S. Commercial Real Estate Investments by Sanctioned Russian Elites, Oligarchs, and Their Proxies,” January 25, 2023, https://www.fincen.gov/sites/default/files/shared/FinCEN%20Alert%20Real%20Estate%20FINAL%20508_1-25-23%20FINAL%20FINAL.pdf.
[72] Acres of Money Laundering, p. 19, https://gfintegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream.

received, and between the purported identities of the investors and the entities actually transferring funds to Sefira.[73]

While directly relevant to money laundering risks in the commercial real estate sector, the same pooled investment structures can be used to move money and make both small and large corporate residential real estate purchases.

We agree with the proposed rule's approach that the only transfers excepted under the rule are those in which qualified extensions of credit are extended to *all* transferees. FinCEN should also consider clarifying the treatment of partially financed transactions – including those in which qualified credit is extended to some, but not all beneficial owners of transferees. Further, as referenced below on p. 26, we recommend that FinCEN add a field to the RER that would document the source of funds in a real estate transaction, which will help identify transactions in which there is mixed financing and provide an additional line of defense against potentially illicit funds.

For pooled vehicles that are sufficiently large and complex, it may be difficult for real estate professionals to assess the source of funds to be used in a particular real estate transaction. In those cases, the final rule should include a checkbox field in the RER that indicates whether the financial institution operating the pooled fund has affirmed that it has an AML/CFT program and provided evidence of the program's existence.

VI. Final Rule Must Clarify Penalties and RER Filing Responsibility

The FACT Coalition's chief concern with the NPRM is the lack of clarity around penalties and enforcement. The rule, as proposed, inadvertently introduces confusion as to how the final rule will be enforced, both by remaining silent on the treatment of specific violations and by drawing a distinction between RERs and regular BSA Suspicious Activity Reports (SARs). These enforcement issues, in turn, introduce a lack of clarity for reporting professionals and others that could lead to confusion, litigation, increased compliance costs, and weak enforcement.

First, as it stands, the proposed rule does not explicitly address the question of penalties for failing to file RERs or filing inaccurate RERs. Since the proposed rule references FinCEN's authority in 31 U.S.C. § 5318(g), it may be inferred that penalties for violating the proposed rule's reporting requirements will be the same as for SAR civil and criminal violations under that

[73] U.S. Department of Justice, "Acting Manhattan U.S. Attorney Announces Settlement Of Civil Forfeiture Claims Against Over $50 Million Laundered Through Black Market Peso Exchange," Press Release, January 12, 2021, https://www.justice.gov/usao-sdny/pr/acting-manhattan-us-attorney-announces-settlement-civil-forfeiture-claims-against-over.

section.[74] However, when it comes to enforcement, the proposed rule should not require real estate professionals or others to make assumptions about applicable penalties. Instead, the proposed rule should be explicit and clarify how it interacts with existing BSA penalties in § 5318(g).

Second, the proposed rule draws a deliberate distinction between SARs under the BSA and the new RER, describing the RER as a "streamlined" report different from a SAR, and noting that real estate professionals will remain exempt from AML compliance program requirements in the BSA. With the proposed rule underscoring the difference between a SAR and RER, it is necessary to specify whether SAR penalties will nevertheless apply to RER violations, either by specific reference in the final rule to penalties under 31 U.S.C. § 5318(g) or by writing the penalties into the rule itself.

Third, the responsibility for filing under the proposed rule differs from traditional BSA practices, in that it relies on a cascade of professionals to file the RER. With traditional SARs filings, it is clear which financial institution has the relationship with the client and is responsible for filing; likewise, it is fairly clear which institution can be held accountable in the event of a failure to file or the filing of false information. In contrast, a cascade – while appropriate to ensure reporting and mitigate evasion tactics – introduces more complexity, more potential points of failure, and less clarity on how to determine who should be held accountable for any reporting failure. The final rule needs to make clear how FinCEN plans to ensure that a report is filed when required. In order for FinCEN to impose penalties when appropriate, FinCEN should have access to the relevant designation agreement so that it can easily determine who had legal responsibility to file a report in a particular real estate transfer.

The rule states, "Although potential reporting persons will likely communicate with each other regarding the need to file a report, there would be no requirement to verify that any other potential reporting person in fact filed it."[75] This puzzling statement weakens the entire rule by indicating that no one has to ensure the filing actually took place. A better approach would be to require a written statement by the reporting person at the time of the real estate closing that the RER filing took place and to apply the five-year recordkeeping requirement to that statement. That requirement would then make it easier for FinCEN to assess penalties in the event of a reporting failure.

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[74] *Legal professionals have started communicating this expectation, see* Peter D. Hardy, Richard J. Andreano, Jr., Kelly Lin & Kaley Schafer, "FinCEN Proposes BSA Reporting Requirements for Residential Real Estate," Ballard Spahr, February 22, 2024, https://www.moneylaunderingnews.com/2024/02/fincen-proposes-bsa-reporting-requirements-for-residential-real-estate/.

[75] NPRM p. 12,437.

The final rule should also clarify its expectations of real estate professionals faced with clients, entities, trusts, or others unwilling to provide required information for completion of an RER, including the identity of an entity's beneficial owners. The final rule should make clear that, in such cases, real estate professionals should not file incomplete reports, but should consider declining to complete the real estate transfer.[76] The final rule should also make clear that reports filed with knowingly incomplete or false information are subject to penalties.

VII. FinCEN Must Strengthen Real Estate Reporting to Capture Money Laundering Risks

Non-Discretionary Judgment Approach Faces Shortcomings (Question 34)

We understand FinCEN's efforts to strike the right balance to make sure that costs to reporting real estate professionals are low while maximizing the anti-money laundering impact of information included in the proposed RER. We applaud the proposed rule's five-year record keeping requirements for the reporting person and all parties to a designation agreement and the rule's requirement that filings be made electronically. We agree that 30 days after closing is a reasonable timeframe for filing an RER, and would encourage FinCEN not to delay or extend that window since the information in the filings could become outdated in a longer time frame and become less useful for law enforcement investigations.

At the same time, consistent with our comments on the ANPRM, FACT believes the proposed rule should require real estate professionals to conduct due diligence reviews of their clients, performing the "know-your-customer" checks that serve as the most basic AML safeguard.[77] In a study of some of the largest economies in OECD member countries, Transparency International U.S. found that 20 of 21 jurisdictions required basic customer due diligence (CDD) reviews by real estate professionals, and at least half used risk-based programs.[78] **The proposed RER program lacks certain AML requirements that are absolutely crucial to safeguard the United States against dirty money.** If FinCEN will not extend full CDD for real estate professionals, then it must at least do two things: 1) require that reporting real estate professionals perform a "clear error" or "best efforts" check to ensure they are not receiving

[76] For comparison purposes, see the federal bank examination manual which directs examiners to determine whether a bank being examined "[a]ppropriately resolved situations in which customer identity could not be reasonably verified and filed SARs, as appropriate." FFIEC BSA-AML Manual, Assessing Compliance with BSA Regulatory Requirements, Customer Identification Program Examination and Testing Procedures, https://bsaaml.ffiec.gov/manual/AssessingComplianceWithBSARegulatoryRequirements/01_ep.

[77] FACT Coalition, "Letter Re: Anti-Money Laundering Regulations for Real Estate Transactions, Docket #: FINCEN-2021-0007; RIN: 1506-AB54; Document #: 2021-26549," FACT Coalition, February 18, 2022, https://thefactcoalition.org/wp-content/uploads/2022/02/FACT-Final-RE-ANPRM-submission.pdf.

[78] 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/.

obviously fraudulent information (e.g. "123 Main Street"), and 2) maintain the proposed data fields and add more information fields to the RER.

Adding Fields to RER To Mitigate Risks (Questions 27-28, 34-42)

In general, FinCEN requires the provision of information in the RER that both helps real estate professionals better understand real estate transfers while also providing law enforcement with helpful investigative leads. As an initial matter, we encourage FinCEN not to make any of the proposed data fields in the RER any less inclusive. In particular, we applaud the proposed rule's alignment of the definition of "beneficial owner" with that of the Corporate Transparency Act, a new anti-money laundering law that took effect on January 1, 2024. To minimize confusion among FinCEN's various definitions of beneficial owner (used in the GTOs and in the CDD Rule), promote consistency across state lines, and maximize the ability to cross-reference data, the proposed rule properly adopts the most recent definition of beneficial owner in the CTA. Not only does this approach help with understanding and compliance – as FinCEN is already doing outreach to many legal entities about their CTA filing requirements – but it employs a standard on which Congress deliberated for nearly twenty years and that is one of the better crafted definitions in the world.[79]

Nevertheless, there are notable AML gaps in the RER that create AML risks. These gaps could be addressed by strengthening the proposed RER. The final rule should *add* the following data fields to the RER:

- ❖ ***Jurisdiction of Formation:*** To provide law enforcement a stronger starting point for potential investigations, entities or trusts should identify their jurisdiction of formation, whether a U.S. or foreign jurisdiction. The RER could also request a copy of the formation document.
- ❖ ***BO of Transferor****:* The proposed rule currently requires beneficial ownership information only for the transferee entity. The rule should likewise require beneficial ownership information for the transferor entity. That would allow capture of transfers of real estate that is currently held by illicit actors.
- ❖ ***BO Verification:*** FinCEN requires only the collection, not verification, of beneficial ownership information. Reporting professionals should instead be required to collect proof of the identity of an entity's beneficial owners in the form of either a driver's

[79] *In the CTA definition, a beneficial owner is someone who owns 25 percent or more of a reporting entity, or exercises "substantial control" over that entity. Just as important as who does qualify as a beneficial owner is who does not qualify as a beneficial owner: for instance, a minor, a nominee, or an employee without other qualifying ownership stakes.* 31 U.S. Code §5336(a)(3).

license or passport, using the same approach as the CTA. In implementing the CTA, FinCEN recognized the risk that not verifying this information posed. The same standard should be upheld here: verification of the beneficial ownership information in RERs will be critical to the effective implementation of the final rule.

- ***Politically Exposed Persons (PEPs)**:* Many of the REML cases we cite in this comment reflect major corruption cases from senior government officials in various parts of the world. **Real estate professionals should be required to check whether their client is known as a PEP, and declare whether that is the case on the RER.** Such inquiries can be performed via direct inquiries to the client, by checking information on the Internet, and by consulting other sources of information.[80] This relatively high-impact datapoint would be consistent with PEP due diligence checks performed by other financial institutions.[81]
- ***OFAC Check**:* The proposed rule does not currently require reporting professionals to check their clients and any beneficial owners against the sanctions list issued by the Office of Foreign Asset Control (OFAC). It is already illegal for any U.S. professional to work with a sanctioned person, which means that real estate professionals should already be performing this function, but adding it to the RER would assist with enforcement. An OFAC search is a cost-free, relatively quick procedure that serves important anti-money laundering and national security purposes and complies with the law. A checkbox on the RER could confirm that this step was taken, and no sanctioned persons were identified.
- ***Source of funds**:* It may be difficult for a real estate professional to identify whether a particular real estate transfer presents heightened risks of money laundering without better understanding the various sources of funds. Professionals need to describe, perhaps by selecting from standard options and identifying originating financial institutions, how a particular transaction was funded. This data would provide law enforcement with an additional place to start when pursuing money laundering investigations.
- ***Pooled Investment Vehicles**:* If a pooled vehicle involved in a real estate transfer is sufficiently large and complex, consider including a field in the RER to mark whether the person managing the pool has an AML/CFT program in place and, if so, has presented verifiable evidence of theAML/CFT program's existence.

[80] See, e.g., "Guidance on Enhanced Scrutiny for Transactions that may Involve the Proceeds of Foreign Corruption," U.S. Department of Treasury and others (2001), Section II(E), https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2012/12/03/response2-appx-w.pdf.
[81] See, e.g., FFIEC BSA-AML Manual, Assessing Compliance with BSA Regulatory Requirements, Customer Due Diligence — Overview, https://bsaaml.ffiec.gov/manual/AssessingComplianceWithBSARegulatoryRequirements/02.

VIII. Proposed Rule Offers Overall Low-Cost Solution to Address Money Laundering Risk

Compared to the size of the U.S. residential real estate market, the proposed rule provides an overall low-cost solution to prevent money laundering. Much of the information required for an RER is already collected in the course of a real estate transaction. Real estate professionals already need to know their customers in order to verify the customer's ability to pay for the purchase (even if not beneficial ownership identification as yet). In addition, at least some real estate actors have already implemented some AML safeguards, reducing the implementation costs of the proposed rule.

Other countries have implemented similar systems, and adapted accordingly and remained competitive. This is even the case in jurisdictions where AML obligations placed on the real estate sector include customer due diligence and suspicious activity reporting, such as in the United Kingdom.[82] U.K. real estate agents are also required to pay annual fees to be registered with the U.K. Revenue and Customs department.[83] Yet the number of real estate agencies in the U.K. has grown by 10.6 percent in the year to April 2023, and by 20.6 percent in the previous five years.[84] The current proposal places fewer obligations on those involved in U.S. real estate and does not require a fee for registration with the U.S. government.

IX. Commercial Real Estate Transfers Should Also Be Covered by U.S. Bank Secrecy Act (Question 50)

The FACT Coalition commends FinCEN on this proposed rule, and urges it to finalize and implement it in a timely manner.[85] However, we are concerned that the proposed rule does not cover commercial real estate transfers. The Treasury Department has acknowledged the money laundering risk that accompanies commercial real estate, in its 2024 National Money Laundering Risk Assessment:

> The commercial real estate sector is also exposed to risk, as it is common to use purpose-built legal entities, indirect ownership chains, multiple types of ownership and

[82] 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.

[83] Credas, "AML Guidance for Estate Agents," January 18, 2023, https://credas.com/resources/a-guide-to-aml-for-estate-agents/.

[84] 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.

[85] *The proposed rule should be finalized without delay and without regard to any pending legal challenges to the Corporate Transparency Act (CTA), because this rule and CTA serve different purposes and require the reporting of different information in several respects, as the NPRM notes* (pp. 12,429-12,430).

financing options, and the presence of multiple parties to each commercial real estate transfer, each of which can obscure an owner's identity and source of funds.[86]

FinCEN has released a 2023 alert to BSA-covered financial institutions, making the same points and noting that commercial real estate is particularly vulnerable to abuse by Russian oligarchs.[87] Protecting the real estate sector from dirty money will be incomplete without addressing both residential and commercial real estate.

These concerns are backed up by numerous examples of money laundering through real estate in recent years (see annex). The Anti-Corruption Data Collective, Global Financial Integrity, and the FACT Coalition have also just published *Money Laundering Risks in Commercial Real Estate: An Analysis of 25 Case Studies,* which highlights these risks.[88] The report finds that more than $2.6 billion in suspicious funds were invested through commercial real estate in the last 20 years, originating in 14 different countries and being invested in property in 22 different U.S. states. More than half of the cases studied involved politically exposed persons.

Money laundering risks are only increasing in this sector as it continues to grow and evolve. For instance, developers are starting to move away from debt financing in favor of equity financing, increasingly relying on private funds as a means to bankroll new projects.[89] As discussed earlier, these funds present a high-risk of money laundering, and demand further examination from FinCEN both in the context of this rule and in the private fund rule currently under consideration.[90] Further, there are increased financial pressures on the commercial real estate sector in light of market shifts since the COVID-19 pandemic. Plummeting demand for space in

[86] U.S. Department of Treasury, "2024 National Money Laundering Risk Assessment," February 2024, p. 77, https://home.treasury.gov/system/files/136/2024-National-Money-Laundering-Risk-Assessment.pdf.

[87] Financial Crimes Enforcement Network (FinCEN), "FinCEN Alert: FinCEN Alert on Potential U.S. Commercial Real Estate Investments by Sanctioned Russian Elites, Oligarchs, and Their Proxies," January 25, 2023, https://www.fincen.gov/sites/default/files/shared/FinCEN%20Alert%20Real%20Estate%20FINAL%20508_1-25-23%20FINAL%20FINAL.pdf.

[88] Global Financial Integrity, Anti-Corruption Data Collective, and the FACT Coalition, "Money Laundering Risks in Commercial Real Estate: An Analysis of 25 Case Studies," April 2024, https://acdatacollective.org/wp-content/uploads/2024/04/Money-Laundering-Risks-in-Commercial-Real-Estate-ACDC-GFI-FACT.pdf.

[89] Milton Ezrati, "Covid's Long Shadow Still Spreads Over Commercial Real Estate," Forbes, March 17, 2023, https://www.forbes.com/sites/miltonezrati/2023/03/17/covids-long-shadow-still-spreads-over-commercial-real-estate/?sh=43f41b427ae5

[90] Financial Crimes Enforcement Network (FinCEN), "AML/CFT Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers Docket Number FINCEN–2024–0006; RIN 1506–AB58," February 15, 2024, https://www.federalregister.gov/documents/2024/02/15/2024-02854/financial-crimes-enforcement-network-anti-money-launderingcountering-the-financing-of-terrorism.

office buildings located in central business districts[91] may leave real estate investors clamoring for inflows of cash, particularly as many of the loans in the CRE office sector are up for refinancing in the next few years and likely face steep increases in interest rates.[92] Unlike traditional investors, money launderers are more tolerant of losses as an expected business cost for laundering their suspect funds. This pressure on the market makes the need for FinCEN action even stronger.

To create a strong rule for residential property only to see an arbitrage towards money laundering through commercial property would be a perverse outcome of what the FACT Coalition considers to be a strong residential real estate rule. To prevent that outcome, FinCEN should promptly move to craft a proposed rule tailored to the unique and complex features of commercial real estate that are being abused by corrupt actors to launder ill-gotten gains. Such a rule will in many ways parallel this proposal, but it will be necessary to take into account unique aspects of the commercial real estate sector. We endorse recommendations made in the 2021 GFI comment on the ANPRM for outlining a commercial real estate cascade.[93] We also emphasize the importance of including real estate lawyers as reporting professionals, given the apparent outsized role they play in the commercial real estate transfer process.[94]

We also urge FinCEN to take interim steps to implement a geographic targeting order (GTO) for commercial real estate in high-risk markets, until such time that a rule is finalized and implemented. Doing so would give FinCEN improved data for the rulemaking process while also deterring, detecting, and flagging risks of money laundering in the CRE sector.

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[91] *The national office vacancy rate for the first quarter of 2024 reached a striking 20.2 percent, one of the highest vacancy rates in a long nine-quarter dip.* David C. Smith, "U.S. Office Reports," 2024, Cushman & Wakefield, https://www.cushmanwakefield.com/en/united-states/insights/us-marketbeats/us-office-marketbeat-reports,

[92] *According to Morgan Stanley Executive Lisa Shallet, "the sector is now facing a huge 'refinancing wall': More than half of the $2.9 trillion in commercial mortgages will be up for refinancing in the next couple of years. Even if current rates stay where they are, new lending rates are likely to be 3.5 to 4.5 percentage points higher than they are for many of CRE's existing mortgages."* "Why U.S. Stocks Remain Vulnerable," April 4, 2023, https://www.morganstanley.com/ideas/alternative-assets-economic-headwinds-q2-2023.

[93] GFI Comment, pp. 25-26, https://gfintegrity.org/report/gfi-comment-submission-to-fincen-on-anprm-to-curb-illicit-financial-flows-in-the-us-real-estate-sector/.

[94] Ibid, p. 15; *See also,* American Land and Title Association (ALTA), "Consumer Title Insurance Shopping Survey". p. 7, September 2016, https://www.alta.org/publications/press-release.cfm?ALTAConsumer-Survey-Shows-40-Confused-by-Title-Fee-Calculation-on-Closing-Disclosure.

Conclusion

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

Respectfully submitted,

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Annex
A Selection of Recent Reported Cases of Money Laundering Through Residential Real Estate

(December 2021 – Present)

Residential Real Estate

Ongoing multiple cases of alleged or actual money laundering through U.S. real estate transactions since the December 2021 ANPRM demonstrate the urgent need for finalizing this rule.

- In March 2024, prosecutors in the Southern District of Florida charged an Argentinian, Paul Oswald Morani, with leading a money laundering conspiracy to move $350 million in illicit funds through U.S. and other shell entities into various assets, including a $2.3 million residential condo in Miami.[95]
- In March 2024, the Department of Justice filed a civil forfeiture action against property purportedly belonging to Claudia Sassou Nguesso, daughter of the president of the Democratic Republic of the Congo.[96] The complaint claims that Sassou Nguesso used funds embezzled from Congolese state coffers to purchase a $7.1 million condo in New York.
- In March 2024, the Department of Justice filed a civil complaint to seize New York residential properties, worth $14 million, purportedly owned by former Mongolian Prime Minister Sukhbaatar Batbold through a series of shell companies.[97] The complaint alleges that Batbold used a portion of $68 million he received through unlawfully awarded mining contracts to make the real estate purchases.[98]

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[95] "Criminal Complaint by Telephone or Other Reliable Electronic Means," United States of America v. Paul Oswald Morani, 1:24-mj-02537-LMR, United States District Court for the Southern District of Florida, March 19, 2024, paragraphs 13, 22; See also: Izzy Kapnick, "EXCLUSIVE: Miami Played Host to $350 Million Argentinian Money-Laundering Scheme, Feds Say," Miami New Times, March 20, 2024, https://www.miaminewtimes.com/news/feds-allege-350-million-argentinian-money-laundering-scheme-in-miami-19332180.

[96] U.S. Department of Justice, "United States of America v. Real Property Located at 1 Central Park West, Unit 32G, New York, New York, 10023," Civil Forfeiture Complaint, March 29, 2024, https://www.documentcloud.org/documents/24527071-sassou-nguesso-trump-condo; See also, Nicole Sadek, "US prosecutors push to seize apartment tied to Congolese president in luxury Trump complex," ICIJ, March 29, 2024, https://www.icij.org/investigations/pandora-papers/us-prosecutors-push-to-seize-apartment-tied-to-congolese-president-in-luxury-trump-complex.

[97] Dylan Tokar, "Former Mongolian Prime Minister's Luxury Manhattan Apartments Targeted by U.S.," Wall Street Journal, March 26, 2024, https://www.wsj.com/articles/former-mongolian-prime-ministers-luxury-manhattan-apartments-targeted-by-prosecutors-4ee612af

[98] U.S. Department of Justice, "United States Seeks Forfeiture of Former Mongolian Prime Minister's Luxury New York City Apartments Purchased with Proceeds of Corruption Scheme," Press Release, March 26, 2024, https://www.justice.gov/usao-edny/pr/united-states-seeks-forfeiture-former-mongolian-prime-ministers-luxury-new-york-city.

- In February 2024, the U.S. government filed a civil forfeiture complaint against two luxury condos in Miami, alleging they were owned by sanctioned Russian individuals Viktor Perevalov and Valeri Abramov, who had founded a construction company in Crimea. After the U.S. sanctions were applied in 2018, the properties were purportedly transferred to an LLC formed with a law firm and with a Perevalov's relative, a minor, listed as the beneficial owner, while the properties were leased and maintained.[99]
- In February 2024, the Department of Justice unsealed an indictment charging Russian oligarch Andrey Kostin and co-conspirators with a scheme to violate U.S. sanctions through the sale of a Colorado residential property for $12 million.[100]
- In January 2023, prosecutors in the Southern District of Texas filed a grand jury indictment of nine Texas individuals who allegedly illegally distributed 1.5 million opioid pills through front pharmacies and black market sales. According to court documents, at least two defendants and their co-conspirators made all-cash, entity purchases of residential real estate to launder the proceeds.[101]
- 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.[102]
- In December 2022, sanctioned Russian intelligence agent Andrii Derkach was charged with laundering money in contravention of U.S. sanctions by purchasing two condominiums for $3.2 million in all-cash transactions in Beverly Hills, California. According to the Department of Justice, Derkach is accused of buying these properties through a complex network of California-based shell companies, offshore accounts, and U.S. bank and brokerage accounts.[103]
- 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

[99] U.S. Department of Justice, "Task Force KleptoCapture Announces Array of New Charges, Arrests, and Forfeiture Proceedings in Advance of Second Anniversary of Illegal Invasion of Ukraine," Press Release, February 22, 2024, https://www.justice.gov/opa/pr/task-force-kleptocapture-announces-array-new-charges-arrests-and-forfeiture-proceedings.
[100] Ibid.
[101] U.S. Department of Justice, "Nine Arrested for Illegally Distributing 1.5 Million Opioid Pills," Press Release, February 2023, https://www.justice.gov/opa/pr/nine-arrested-illegally-distributing-15-million-opioid-pills; "Indictment," USA v. Lyons, et al., 4:23-cr-00040, Texas Southern District Court, January 25, 2023, paragraph 32.
[102] 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.
[103] U.S. Department of Justice, "Russian Intelligence Agent Charged with Fraud and Money Laundering in Connection with Purchase and Use of Luxury Beverly Hills Real Estate," Press Release, December 7, 2022, https://www.justice.gov/usao-edny/pr/russian-intelligence-agent-charged-fraud-and-money-laundering-connection-purchase-and.

with the assistance of family and friends and used the funds to buy cashier's checks to purchase the properties.[104]

- In May 2022, the Department of Justice filed a civil forfeiture complaint to seize a mega-mansion in Los Angeles that it alleges 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.[105]

Commercial Real Estate

While not covered by the proposed rule, commercial real estate continues to pose a risk for money laundering. In addition to cases presented in the new commercial real estate report launched by FACT Coalition members this month,[106] consider the following alleged or actual money laundering cases that continue to demonstrate the need for FinCEN action to prevent, detect, and flag money laundering through commercial real estate.

- In September 2022, the Department of Justice unsealed an indictment charging a U.S. citizen with helping Russian oligarch Oleg Deripaska sell a music studio in California to the tune of $3 million, in violation of U.S. sanctions. He had allegedly owned the studio through a series of corporate shell entities that obscured his actual ownership, and attempted to expatriate the proceeds of the sale to a Russian-based entity.[107]
- In September 2022, the U.S. District Court of Minnesota filed a criminal complaint against 10 individuals alleging that they fraudulently misappropriated millions in COVID-19 funds from a federal child nutrition program. The complaint alleges that

[104] 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.

[105] U.S. Department of Justice, "Justice Department Seeks Forfeiture of Los Angeles Mega-Mansion Allegedly Purchased with Proceeds of Armenian Corruption Scheme," Press Release, May 5, 2022, https://www.justice.gov/usao-cdca/pr/justice-department-seeks-forfeiture-los-angeles-mega-mansion-allegedly-purchased. *See also,* The Guardian, "US to seize $63m Los Angeles mansion it claims was bought with bribe money," May 6, 2022, https://www.theguardian.com/us-news/2022/may/06/us-los-angeles-mansion-armenia-bribe.

[106] Global Financial Integrity, Anti-Corruption Data Collective, and the FACT Coalition, "Money Laundering Risks in Commercial Real Estate: An Analysis of 25 Case Studies," April 2024, https://acdatacollective.org/wp-content/uploads/2024/04/Money-Laundering-Risks-in-Commercial-Real-Estate-ACDC-GFI-FACT.pdf.

[107] U.S. Department of Justice, "Russian Oligarch Oleg Vladimirovich Deripaska and Associates Indicted for Sanctions Evasion and Obstruction of Justice," Press Release, September 29, 2022, https://www.justice.gov/opa/pr/russian-oligarch-oleg-vladimirovich-deripaska-and-associates-indicted-sanctions-evasion-and.

Abdulkadir Salah conspired to commit money laundering, including by using an LLC to buy a bar and restaurant for $1 million in Minnesota.[108]

- In 2022, Vladimir Natera-Abreu pleaded guilty to a conspiracy to distribute various hard drugs such as cocaine, heroin, and oxycodone and laundered proceeds through the purchase of commercial real estate properties in Guaynabo, Puerto Rico.[109]
- In 2021, Baltimore-area drug dealer Anton Williams was sentenced to ten years in prison; the government found that he used LLCs to conceal his ownership of a bar and restaurant that he used to meet with customers and launder money from his sale of cocaine, heroin, and fentanyl.[110]
- In March 2019, the U.S. Southern District of New York filed a complaint connected to an alleged Kazakh embezzlement scheme.Viktor Khrapunov allegedly helped his father-in-law, Mukhtar Ablyavoz, to launder $35 million in funds embezzled from a Kazakh bank through U.S. commercial real estate. In one instance, Felix Sater and associates engaged a law firm to facilitate an Ablyavoz investment in the Tri-County Mall in Ohio, and then submitted false documents to the law firm in order to move the illicit funds into the firm's IOLTA account. According to the criminal complaint, the law firm would not have accepted the escrow payments had it known the source of the funds.[111] Similarly, Sater and associates purchased three units in a SoHo hotel development, transfering funds to the escrow account of the law firm that handled the majority of the development's purchases to disguise the illicit origins of the funds.[112]
- In 2014, a now-sanctioned Cyprus resident, Demitris Ioannides, and his relatives reportedly became the largest investors in an otherwise ordinary four-story mixed residential and commercial building in Queens. In concert with private equity firm Triena

[108] See the indictment filed September 13, 2022: "Indictment," United States of America v. Aimee Marie Bock and Ors., CR 22,223 MJD/DTS, United States District Court, District of Minnesota, September 13, 2022, pp. 46, 51, https://storage.courtlistener.com/recap/gov.uscourts.mnd.203016/gov.uscourts.mnd.203016.1.0.pdf.

[109] United States Attorney's Office District of Puerto Rico, "Vladimir Natera Abreu Sentenced to 15 Years in Prison and Eight Years of Supervised Release," November 10, 2022, https://www.justice.gov/usao-pr/pr/vladimir-natera-abreu-sentenced-15-years-prison-and-eight-years-supervised-release; Financial Crimes Enforcement Network, "Prepared Remarks of FinCEN Director Andrea Gacki During the 20th Puerto Rican Symposium of Anti-Money Laundering," February 22, 2024, https://www.fincen.gov/news/speeches/prepared-remarks-fincen-director-andrea-gacki-during-20th-puerto-rican-symposium-anti.

[110] U.S. Department of Justice, "Money Launderer and Wholesale Supplier of Narcotics to East Baltimore Monument Street Drug Trafficking Organization Sentenced to 10 Years in Federal Prison and Ordered to Forfeit $472,000," Press Release, September 14, 2021, https://www.justice.gov/usao-md/pr/money-launderer-and-wholesale-supplier-narcotics-east-baltimore-monument-street-drug.

[111] "Complaint," City of Almaty, Kazakhstan and BTA Bank JSC v. Felix Sater and Ors., 1:19-cv-02645, United States District Court, Southern District of New York, March 25, 2019, paragraphs 196-201, https://www.courthousenews.com/wp-content/uploads/2019/03/Sater.pdf.

[112] Id., at paragraphs 158-161.

Capital Partners, Ioannides moved money – allegedly amassed by moving questionable funds out of Russia – through shell companies in the British Virgin Islands.[113]

[113] Spencer Woodman, "Oligarchs' Fixer Made Fortune From New York Apartment Building," ICIJ, November 15, 2023, https://www.icij.org/investigations/cyprus-confidential/new-york-property-real-estate-cyprus-financial-services.