

U.S. Treasury Department's Financial Crimes Enforcement Network's Rule Requiring AML Reporting for Real Estate Sector

*Betty Santangelo, Melissa G.R. Goldstein, Julian M. Wise,
Sebastian Orozco Segrera, Scott A. Bowman and
Kyle B. Hendrix**

In this article, the authors review the final rule from the U.S. Treasury Department's Financial Crimes Enforcement Network extending anti-money laundering requirements to persons involved in real estate closings and settlements.

The U.S. Treasury Department's Financial Crimes Enforcement Network's (FinCEN) final rule (the Final Rule) extending anti-money laundering (AML) requirements to persons involved in real estate closings and settlements has become effective and related reporting obligations have commenced.¹ The Final Rule requires certain persons involved in residential real estate closings and settlements to electronically submit reports to FinCEN (Real Estate Reports)² and maintain records relating to certain non-financed transfers of U.S. residential real property. Each Real Estate Report must include, among other items, information concerning the property and identifying information for the transferee entity or trust and its direct and indirect beneficial

owners, the transferor, and the person filing the Real Estate Report (the Reporting Person).

The Final Rule was issued on August 29, 2024 and became effective on March 1, 2026, although compliance with the rule is currently on pause due to a recent court order.³ As such, reporting persons are not required to file Real Estate Reports with FinCEN and are not subject to liability if they fail to do so. That said, industry participants should ensure they understand the Final Rule's scope and their potential obligations in the event the court order is vacated. This article summarizes the Final Rule and highlights its principal provisions, key considerations for affected parties, and the associated reporting requirements.

*The authors, attorneys with McDermott Will & Schulte, may be contacted at bsantangelo@mcdermottlaw.com, mgoldstein@mcdermottlaw.com, jwise@mcdermottlaw.com, seorozco@mcdermottlaw.com, sbowman@mcdermottlaw.com and khendrix@mcdermottlaw.com, respectively.

AUTHORITY FOR RULEMAKING

FinCEN draws its authority for this Final Rule from the Bank Secrecy Act of 1970 (BSA), which permits FinCEN to require AML and countering the financing of terrorism (AML/CFT) programs for “persons involved in real estate closings and settlements”⁴ and from the BSA’s provisions, which authorize the U.S. secretary of the Treasury to require financial institutions to report, via suspicious activity reports (SARs), “any suspicious transaction relevant to a possible violation of law or regulation.”⁵

More recently, the AML Act of 2020 added a provision to the BSA that directs FinCEN to “establish streamlined . . . processes to, as appropriate, permit the filing of noncomplex categories of reports of suspicious activity.”⁶ FinCEN hopes to use these Real Estate Reports to identify illicit financial activity.

The Final Rule follows FinCEN’s use of Residential Real Estate Geographic Targeting Orders (GTOs)⁷ to collect information on a subset of transfers of residential real estate that FinCEN considers to present a high risk for money laundering.

REAL PROPERTY TRANSFERS THAT ARE REPORTABLE

The Final Rule imposes reporting requirements in connection with certain residential real estate transfers in which the purchaser or other recipient of an interest in real property is a legal entity (Transferee Entity) or trust (Transferee Trust). Transfers made directly to individuals are not covered by the Final Rule.

Residential real property under the Final Rule includes:

- Real property containing a structure designed principally for occupancy by one to four families.
- Land on which the transferee intends⁸ to build a structure designed principally for occupancy by one to four families.⁹
- A unit designed principally for occupancy by one to four families within a structure.¹⁰
- A share in a cooperative housing corporation (Reportable Property).¹¹

Reportable Property includes property located in the United States, including any state, the District of Columbia, Indian reservations, and territorial possessions of the U.S.

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

REAL PROPERTY TRANSFERS THAT ARE EXEMPT

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

The Final Rule exempts transfers that are:

- The result of a grant, transfer, or revocation of an easement.
- The result of the death of an owner of the residential real property.¹²
- The result of divorce or dissolution of a marriage or civil union.
- Made to a bankruptcy estate.
- Supervised by a court in the U.S.
- Made to qualified intermediaries for the purpose of 26 C.F.R. 1.1031(k)-1 (also known as a 1031 or like-kind exchange).¹³
- For which there is no Reporting Person.
- Made without consideration by an individual (either alone or with the individual's spouse), to a trust where the trust's settlor or grantor is that same transferor individual, that individual's spouse, or both of them.¹⁴

Note that there are no exemptions based on the value of the property or the purchase price.

KEY TERMS

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

Definition of Transferee Entity

The Final Rule defines a Transferee Entity

as “any person other than a transferee trust or an individual”¹⁵ that is not otherwise exempt. Exempt entities include registered investment companies, securities reporting issuers and certain banks, credit unions, depository institution holding companies, money service businesses, brokers or dealers in securities, securities exchange or clearing agencies, other Securities Exchange Act of 1934 registered entities, insurance companies, state-licensed insurance producers, Commodity Exchange Act of 1936 registered entities, public utilities, financial market utilities, and U.S. governmental authorities. The Final Rule clarifies that legal entities controlled or wholly owned, directly or indirectly, by any entity that falls within the aforementioned categories are themselves exempt.

PIVs that are investment companies and registered with the U.S. Securities and Exchange Commission (SEC) are exempt from the definition of a Transferee Entity. However, PIVs that are not registered with the SEC may be Transferee Entities.¹⁶

Definition of Transferee Trust

The Final Rule defines a Transferee Trust as “any legal arrangement created when a person (generally known as a settlor or grantor) places assets under the control of a trustee for the benefit of one or more persons (each generally known as a beneficiary) or for a specified purpose, as well as any legal arrangement similar in structure or function to the above, whether formed under the laws of the US or a foreign jurisdiction”¹⁷ that is not otherwise exempt. Property titled in the name of a trustee of a Transferee Trust is covered by the rule even if the trustee is an individual. Excluded from Transferee Trusts are trusts

that are securities reporting issuers or trusts that have a trustee that is a securities reporting issuer.¹⁸ Statutory trusts are exempt from the definition of Transferee Trust but could be considered a Transferee Entity, unless subject to another exemption.

Definition of Beneficial Owner

Real Estate Reports must identify beneficial owners of Transferee Entities and Transferee Trusts. A beneficial owner of a Transferee Entity is “any individual who, directly or indirectly, either exercises substantial control over the transferee entity or owns or controls at least 25% of the ownership interests of the transferee entity.”¹⁹ Each such person must be included in a Real Estate Report to FinCEN. In circumstances in which a Transferee Entity does not have any owners that own 25% or more of the direct or indirect interests, such as a tax-exempt organization, the reportable beneficial owners are limited only to the individuals who exercise substantial control over the Transferee Entity. Only those beneficial owners of the Transferee Entity on the date of closing must be reported.

A beneficial owner of a Transferee Trust is any individual who, at the time of the real estate transfer to the Transferee Trust:

- (1) is a trustee;
- (2) otherwise has authority to dispose of Transferee Trust assets, such as may be the case with a trust protector;
- (3) is a beneficiary who is the sole permissible recipient of income and principal from the Transferee Trust or who has the right to demand a distribution of, or to withdraw, substantially all of the assets of the Transferee Trust;

(4) is a grantor or settlor of a revocable Transferee Trust; or

(5) is the beneficial owner of a legal entity or trust that holds one of the positions described in clauses (1) – (4), taking into account the exemptions that apply to Transferee Entities and Transferee Trusts (such as a regulated private trust company that may qualify for the bank exception).

PERSONS RESPONSIBLE FOR FILING A REAL ESTATE REPORT

The Final Rule adopts a cascade approach to reporting obligations. In other words, FinCEN identifies seven levels of persons who may be responsible for filing the Real Estate Report. The person(s) in the first tier of the cascade has the primary obligation to file the Real Estate Report. However, “if no person is involved in the transfer as described in the first tier of potential reporting persons, the reporting obligation would fall to the person involved in the transfer as described in the second tier of potential reporting persons, if any, and so on.”²⁰ The categories are based on the functions performed in a closing or settlement prepared for the transferee only. That means that a Reporting Person could be a buyer representative, real estate agent, or lawyer, among other persons.

The cascade order is as follows:

- 1. Real estate professionals providing certain settlement services in the settlement process (e.g., a title company). This is the person listed as the closing or settlement agent on a settlement or closing statement.
- 2. If no one is listed as the closing or settle-

ment agent, the reporting obligation next falls on the person that prepared the closing or settlement statement.

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

Although the cascade is the default way to determine the Reporting Person, those in the cascade can enter into a written agreement to

designate another person in the cascade as the Reporting Person. However, the agreement can only apply to a specific transaction.²¹

Notably, the Final Rule excludes financial institutions with an obligation to maintain an AML/CFT program from the definition of a Reporting Person, as these institutions are subject to the more comprehensive AML/CFT program responsibilities, including the SAR filing requirement.²² Accordingly, where financial institutions would have otherwise been a Reporting Person, the reporting obligation falls to the next available person in the reporting cascade.

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

INFORMATION THAT MUST BE REPORTED

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

- *Transferee Entity*: name; trade name or "doing business as" name; street address of principal place of business and, if not in the U.S., the street address of the primary location in the U.S. where the Transferee Entity conducts business; and unique identifying number such as a

taxpayer identification number (TIN). Note that a legal entity identifier is not an acceptable unique identifying number.²³

- *Beneficial owners of each Transferee Entity:* name, date of birth, residential street address, citizenship, and unique identifying number such as a TIN.
- *Signing individual(s)²⁴ of each Transferee Entity:* name; date of birth; residential street address; unique identifying number such as a TIN; description of the capacity in which the individual is authorized to act as the signing individual; and if the signing individual is acting in that capacity as an employee, agent, or partner, the name of the individual's employer, principal, or partnership.

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

- *Transferee Trust:* name, such as the full title of the agreement establishing the trust; date the trust instrument was executed; unique identifying number such as a TIN; and whether the trust is revocable.
- *Each trustee that is a legal entity:* name; trade name or "doing business as" name; street address of principal place of business and, if not in the U.S., the street address of the primary location in the U.S. where the transferee trustee conducts business; and unique identifying number such as a TIN.²⁵
- *Beneficial owners of each Transferee Trust:* Same as beneficial owners for Transferee Entities, with the addition of

their category of beneficial owner (trustee, beneficiary, etc.)

- *Signing individual(s) of each Transferee Entity:* Same as signing individuals for Transferee Entities.

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

- *Individual transferor:* name, date of birth, residential street address, and unique identifying number such as a Social Security Number or TIN.
- *Transferor entity:* name; trade name or "doing business as" name; street address of principal place of business, and, if not in the U.S., the street address of the primary location in the U.S. where the transferor entity conducts business; and unique identifying number such as a TIN.
- *Transferor trust:* name; date the trust instrument was executed; unique identifying number such as a TIN; for each individual that is a trustee: name, address, and unique identifying number such as a TIN; and for each legal entity trustee: name, trade name or "doing business as" name, street address of principal place of business, and, if not in the U.S., the street address of the primary location in the U.S. where the transferor trustee conducts business and unique identifying number such as a TIN.

The following information must be included in a Real Estate Report for each Reportable Property: street address, if any; the legal description, such as the section, lot, and block;

and the date of the real estate transaction closing.

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

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

THE REASONABLE RELIANCE STANDARD

A Reporting Person may rely on information provided by any other person orally or in writing for purposes of reporting information or to make a determination necessary to comply with the Final Rule “absent knowledge of facts that would reasonably call into question the reliability of the information.”²⁶ Accordingly, the Final Rule provides that the reasonable reliance standard only applies when beneficial ownership information is provided by the transferee or the transferee’s representative and such representative “certifies the accuracy of the information in writing to the best of their knowledge.”²⁷ This reasonable reliance stan-

dard is consistent with other customer due diligence requirements for financial institutions.²⁸

REAL ESTATE REPORT FILING DEADLINES

The Final Rule requires a Reporting Person to file the Real Estate Report with FinCEN on the final day of the month following the month in which a closing took place or 30 days after the date of the closing, whichever is later.²⁹

CONFIDENTIALITY

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

RECORDKEEPING

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

PENALTIES

Penalties will follow the existing civil and criminal penalty structure under the BSA. Civil

penalties for negligent violations are \$1,394 for each violation (up to \$108,489 for a pattern of negligent activity) while the penalties for willful violations are the greater of the amount involved in the transaction (not to exceed \$278,937) or \$69,733.³⁰ Additionally, willful violations could result in up to five years of imprisonment or a criminal fine of up to \$250,000, or both.³¹

NOTES:

¹See Final Rule, Anti-Money Laundering Regulations for Residential Real Estate Transfers, 89 Fed. Reg. 70,258 (Aug. 29, 2024) (hereinafter, Final Rule); Exemptive Relief Order to Delay the Effective Date of the Residential Real Estate Rule, FinCEN (Sept. 30, 2025) (extending the effective date of the Final Rule to March 1, 2026).

² <https://bsaefiling-sandbox.fincen.gov/forms/RERX.pdf>.

³The Final Rule was vacated by a federal court on March 19, 2026. *Flowers Title Cos. LLC v. Bessent*, No. 6:25-cv-00127-JDK, 2026 WL 782283, at *8 (E.D. Tex. Mar. 19, 2026). FinCEN has appealed, *Flowers Title Cos. v. Bessent*, No. 26-40285 (5th Cir. May 13, 2026), but as of this article's publication date, compliance with the Final Rule remains suspended.

⁴31 U.S.C.A. § 5312(a)(2)(U).

⁵31 U.S.C.A. § 5318(g)(1).

⁶AML Act, § 6202 (codified at 31 U.S.C.A. § 5318(g)(D)(5)(i)(1)).

⁷ <https://www.fincen.gov/news/news-releases/fincen-renews-residential-real-estate-geographic-targeting-order-s-0>.

⁸The reasonable person standard adopted in the Final Rule permits the Reporting Person to reasonably rely on information provided by the transferee to determine such intent. Final Rule, 89 Fed. Reg. at 70,266.

⁹FinCEN updated this portion of the definition to address comments to the proposed rule relating to the difficulty in determining whether vacant or unimproved land is zoned or permitted for residential use. Compare Final Rule, 89 Fed. Reg. at 70,266 with proposed rule, 89 Fed. Reg. at 12,431 ("vacant or unimproved land located in the United States zoned, or for which a permit has been issued, for the construction of a structure designed principally for occupancy by one to four families").

¹⁰Separate residential units within a building, such as individually owned condominium units and entire buildings designed for occupancy by one to four families,

are Reportable Property. Final Rule, 89 Fed. Reg. at 70,266.

¹¹Properties with a commercial element may be Reportable Property if they meet any of the prongs in the definition of Reportable Property, such as a single-family residence that is located above a commercial enterprise.

¹²Exempted transfers resulting from death include all transfers resulting from death, whether pursuant to the terms of a will or a trust, by operation of law, or by contractual provision.

¹³Like-kind exchanges are a commonly used federal income tax strategy to defer the realization of gain or loss and the taxes associated therewith. This exception is limited to transfers made to "the qualified intermediary; transfers from a qualified intermediary to the person conducting the exchange (the exchanger) remain potentially reportable if the exchanger is a legal entity or trust." Final Rule, 89 Fed. Reg. at 70,268.

¹⁴Final Rule, § 1031.320(b)(2)(vi).

¹⁵Final Rule, § 1031.320(n)(10).

¹⁶Final Rule, 89 Fed. Reg. at 70,282.

¹⁷Final Rule, § 1031.320(n)(11).

¹⁸Final Rule, 89 Fed. Reg. at 70,269.

¹⁹31 C.F.R. 1010.380(d).

²⁰Final Rule, 89 Fed. Reg. at 70,270.

²¹Final Rule, 89 Fed. Reg. at 70,272.

²²The Final Rule exempts financial institutions with an existing SAR filing requirement because Real Estate Reports are "streamlined SAR[s]" and such financial institutions "already have a SAR filing requirement that is more expansive than the streamlined reporting requirement adopted by" the Final Rule. Final Rule, 89 Fed. Reg. at 70,271. Such financial institutions include, among others, banks, broker-dealers, money services businesses, futures commissions merchants, introducing brokers, and mutual funds. 31 C.F.R. § 1010.100(t).

²³Final Rule, 89 Fed. Reg. at 70,272.

²⁴The term "signing individual" means each individual who signed documents on behalf of the Transferee Entity or Transferee Trust as part of the reportable transfer. Signing individuals do not include any individual who signed documents as part of their employment with a financial institution that has an obligation to maintain an AML/CFT program and an obligation to file SARs.

²⁵Each trustee that is an individual is considered a beneficial owner.

²⁶Final Rule, § 1031.320(j).

²⁷Final Rule, § 1031.320(j)(2).

²⁸See 31 C.F.R. § 1010.230(b)(2).

²⁹Final Rule, § 1031.320(k)(3).

³⁰31 U.S.C.A. §§ 5321, 5322; 31 C.F.R. § 1010.821.

³¹31 U.S.C.A. § 5322.