



April 16, 2024

Andrea Gacki, Director
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P.O. Box 39
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RE: Notice of Proposed Rulemaking on Anti-Money Laundering Regulations for Residential Real Estate Transactions (Docket Number FINCEN-2024-0005 and RIN 1506-AB54)

Director Gacki:

As the Attorneys General of 25 states and territories, we write to provide comments about the Financial Crimes Enforcement Network’s (“FinCEN”) Notice of Proposed Rulemaking (“NPRM”) on Anti-Money Laundering Regulations for Residential Real Estate Transactions, Docket Number FINCEN-2024-0005 and RIN 1506-AB54. This letter reiterates the state attorney general community’s long-standing support for ensuring that law enforcement has the tools it needs to address financial crimes like money laundering, and for deterring bad actors from abusing corporate and similar structures to conceal criminal activity.¹

For the reasons set forth below, we support the proposed regulations, which will require “certain persons involved in real estate closing and settlements to submit reports and keep records on identified non-financed transfers of residential real property to specified legal entities and trusts on a nationwide basis.”² We believe that the reporting requirements will, as intended, increase

¹ See, e.g., Letter from Nat’l Ass’n of Att’ys Gen. to Policy Div., Fin. Crimes Enf’t Network (Feb. 14, 2023), at 2-3, <https://www.naag.org/wp-content/uploads/2023/02/2023.02.14-NPRM-Comment-Letter-State-Attorneys-General-Ltrhd-FINAL.pdf> (signed by 42 attorneys general); Letter from Nat’l Ass’n of Att’ys Gen. to Policy Div., Fin. Crimes Enf’t Network (May 6, 2021), at 2-3, <https://naagweb.wpenginepowered.com/wp-content/uploads/2021/05/Comments-from-NAAG-FINAL-with-PR.pdf> (signed by 40 attorneys general); Letter from Nat’l Ass’n of Att’ys Gen. to Hon. Michael Crapo, Chairman, Senate Banking, Housing and Urban Affairs Committee, and Hon. Sherrod Brown, Ranking Member, Senate Banking, Housing and Urban Affairs Committee (June 30, 2020), <https://naagweb.wpenginepowered.com/wp-content/uploads/2020/10/Final-NAAG-Support-of-ILLICIT-CASH-Act.pdf> (signed by 42 attorneys general).

² Federal Register, 89 Fed. Reg. 12424 (February 16, 2024), <https://www.federalregister.gov/documents/2024/02/16/2024-02565/anti-money-laundering-regulations-for-residential-real-estate-transfers>.

transparency in the residential real estate sector to reduce the risk that transactions are used to conceal unlawful activities or launder illegal money.

These regulations will ensure that all of our states benefit from data akin to what is gathered in FinCEN's Residential Real Estate Geographical Targeting Orders, which have effectively aided law enforcement since 2016 by generating investigative leads, identifying assets, and supporting prosecutions.³ Those orders appear to have additionally had a deterrent effect on money laundering in real estate—an effect that will be magnified by the proposed regulations.⁴

The proposed regulations will:

- Require businesses, including attorneys, performing closing or settlement functions, for a non-financed sale or transfer of residential property to any entity or trust, to collect and report information to FinCEN.
- Permit federal, state, and local law enforcement to access more information about suspicious real estate transactions more efficiently from a single source.
- Aide law enforcement personnel in identifying suspicious real estate transactions on a national basis that may otherwise remain undetected.

To serve these goals, FinCEN will create a new form—the Real Estate Report—that will fulfill its requirements to both reduce the burdens on those who are required to report this information while still ensuring that the information remains useful for law enforcement agencies.⁵ These Real Estate Reports will collect:

- Names and addresses, as well as unique identifiers like IRS Taxpayer Identification Numbers or Social Security Numbers, for key participants in the transfer of residential real estate.
- Citizenship information for all beneficial owners of a transferee entity or trust.
- Representative capacities of the signing individuals, including whether the signatory is a legal representative, employee, or partner.
- Information about payment for the property, including payments to and from any escrow or trust accounts.⁶
- Information about the property, including its address and a legal description.

The Real Estate Reports will also require disclosure of the identities of the beneficial owners of a trust. Additionally, the proposed regulations encompass real estate transactions involving nonprofit organizations, which will be critical to ensure the proper protection of donor

³ U.S. Government Accountability Office, Anti-Money Laundering: FinCEN Should Enhance Procedures for Implementing and Evaluating Geographic Targeting Orders, 20-22 (July 2020), <https://www.gao.gov/assets/gao-20-546.pdf>.

⁴ *Id.* at 23.

⁵ 31 U.S.C. § 5318(g)(5)(D)(i)(I).

⁶ *Id.* at ¶ 242, <https://www.federalregister.gov/d/2024-02565/p-242> (“The proposed rule would collect the total consideration paid by *all* transferees regarding the residential real property, as well as the total amount paid by the transferee entity or trust, the method of each payment made by the transferee entity or transferee trust, the 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 on the payment form.”)

funds and of particular interest to state attorneys general, who typically have oversight over nonprofits.⁷

This regulatory scheme strikes an appropriate middle ground and will not be unduly burdensome on the reporting parties. The Real Estate Reports impose a streamlined reporting requirement that is less onerous than financial institutions' obligations to file Suspicious Activity Reports.⁸ FinCEN will also continue to exempt persons involved in real estate closings and settlements from the Bank Security Act's requirement to establish anti-money laundering programs.⁹ Moreover, certain transfers, including purchases of real estate by natural persons,¹⁰ will not be subject to the reporting requirements.

We also write to applaud the common-sense exemption from the confidentiality provision that the proposed rule makes for federal, state, local, and tribal government authorities.¹¹ Our offices expect to use the information obtained in Real Estate Reports to ensure we fulfill our mandate to fully enforce the laws of our states—which vary from criminal, to civil, to administrative.

In conclusion, we support the proposed regulations and resulting reports. We expect our offices and our states will benefit from both the deterrent effect these requirements will have on potential money launderers and the data that FinCEN will gather. We look forward to using the Real Estate Reports to generate investigative leads, identify assets, and assist our enforcement actions. Furthermore, we encourage all efforts to protect our economic and national security interests, and we urge FinCEN to apply the same rules to the commercial real estate sector, as appears to be under consideration.¹²

Very Truly Yours,



Gentner Drummond
Oklahoma Attorney General



Kathleen Jennings
Delaware Attorney General

⁷ *Id.* at ¶ 128, <https://www.federalregister.gov/d/2024-02565/p-128>.

⁸ 31 U.S.C. § 5318(g)(1).

⁹ Federal Register, 89 Fed. Reg. 12424, ¶ 84 <https://www.federalregister.gov/d/2024-02565/p-84>.

¹⁰ *Id.* at ¶ 198, <https://www.federalregister.gov/d/2024-02565/p-198>.

¹¹ *Id.* at ¶ 262, <https://www.federalregister.gov/d/2024-02565/p-262>.

¹² *Id.* at ¶ 317, <https://www.federalregister.gov/d/2024-02565/p-317> (“This NPRM is focused on residential real estate. Do the same considerations for type of purchaser covered and professionals required to report apply to the commercial real estate sector?”).

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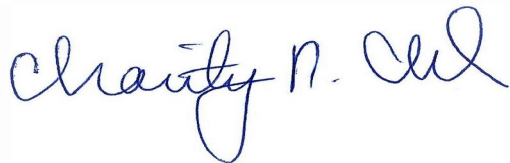
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