

April 16, 2024

Andrea Gacki
Director
Financial Crimes Enforcement Network
U.S. Department of the Treasury
P.O. Box 39
Vienna, VA 22183

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,

This letter responds to the request¹ 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 regulations for certain residential real estate transfers.

As organizations that advocate for fair, affordable access to housing for all Americans, **we applaud FinCEN’s release of strong draft rules targeting illicit finance in U.S. residential real estate markets**, as well as the bureau’s recognition of the wide ranging impacts that real estate money laundering can have on tenants, homebuyers, and the affordability and stability of regional housing markets. We think this rule will improve housing access for average Americans.

While we are largely supportive of FinCEN’s proposed rule, we make the following recommendations to enhance the effectiveness of any final anti-money laundering regime for non-financed real estate transactions:

- Enumeration of clear, appropriate penalties for failure to file required information; and
- Swift application of comparable safeguards against money laundering through transfers of commercial real estate, such as apartment complexes, including through temporary, “stopgap” measures while such rules are being drafted and finalized.

Real Estate Money Laundering’s Housing Impacts

¹ Federal Register (February 16, 2024), “Anti-Money Laundering Regulations for Residential Real Estate Transfers,” <https://www.federalregister.gov/documents/2024/02/16/2024-02565/anti-money-laundering-regulations-for-residential-real-estate-transfers>

During congressional testimony in February, FinCEN Director Andrea Gacki noted that “the flow of illicit money into the residential real estate sector... raises the costs of the real estate sector altogether.”² This connection is further expanded upon in FinCEN’s draft rule itself, which notes that inflationary prices may have the “deleterious effect” of crowding out buyers without money laundering intent.³ It further states, “Money laundering through real estate—though it represents only a relatively small percentage of GDP and takes place in a minority of real estate transfers—can catalyze significant market failures when concentrated in areas that are economically distressed or with low housing volume. In some cases, this distortion can contribute to housing bubbles in affected areas, which may eventually burst and lead to economic instability in impacted regions.”

These broad market impacts are not just theoretical: A 2019 study conducted by a panel of Canadian experts on the effects of money laundering in British Columbia found that “almost 5 percent of the value of real estate transactions in the province result from money laundering.” According to their estimates, this inflow of dirty money inflated housing prices in the province by between 3.7 to 7.5 percent.⁴ A more recent study in Italian provincial markets also found that real estate money laundering “creates an upwards distortion in the housing market prices.”⁵ There is no reason to think that similar effects are not being seen in U.S. housing markets.

These inflationary effects can compound broader trends – including the purchase of ever-greater percentages of available properties by private equity firms and corporate landlords – that are increasingly making home ownership unattainable for average Americans. A 2024 Treasury Department risk assessment has also highlighted significant money laundering risks in the \$20 trillion private investment sector, raising further questions about the negative impact the increased role of private investment has had on the affordable housing crisis.⁶

The anonymity provided by all-cash purchases and other non-financed transfers of real estate not only constitutes a substantial money laundering risk in and of itself, but can also provide unfair advantages to sophisticated actors not enjoyed by average homebuyers. The average homebuyer represents themselves in a transaction and relies on mortgages or other financing to make a purchase; on the other hand, a small subset of real estate transactions conducted in all-cash, behind the veil of corporate secrecy, is driving market distortions that crowd out regular people.

² House Financial Services Committee (February 14, 2024), “Hearing Entitled: Oversight of the Financial Crimes Enforcement Network (FinCEN) and the Office of Terrorism and Financial Intelligence (TFI),”

<https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=409139>

³ Federal Register (February 16, 2024), “Vol. 89, No. 33 / Friday, February 16, 2024 / Proposed Rules,” Page 12445, <https://www.govinfo.gov/content/pkg/FR-2024-02-16/pdf/2024-02565.pdf>

⁴ Maloney, Somerville, and Unger (March 31, 2019), “Combating Money Laundering in BC Real Estate,” https://news.gov.bc.ca/files/Combating_Money_Laundering_Report.pdf

⁵ Novaro, Piacenza, and Turati (May 16, 2022), “Does money laundering inflate residential house prices? Evidence from the Italian provincial markets,” <https://onlinelibrary.wiley.com/doi/abs/10.1111/kykl.12306>

⁶ Department of the Treasury (February 2024), “2024 Investment Adviser Risk Assessment,” <https://home.treasury.gov/system/files/136/US-Sectoral-Illicit-Finance-Risk-Assessment-Investment-Advisers.pdf>

Aspiring homebuyers and renters alike simply should not be forced to compete with anonymous entities – including those concealing criminal or other abusive activity – for limited affordable housing options at ever-inflated prices.

Anonymous ownership of residential real estate also allows landlords to dodge accountability for poor housing conditions, wrongful evictions, and other abuses. With their identities obscured behind layers of anonymous shell entities, landlords have little incentive to be responsive to tenants' needs, and tenants are often left without effective recourse in the face of deteriorating, and sometimes dangerous, living conditions.⁷

In its most extreme form, this dynamic can have lethal consequences. The 2021 collapse of Champlain Towers South in Surfside, Florida – a twelve story condominium believed to have been constructed and operated at least partially for money laundering purposes – killed 98 people as the result of poor construction and maintenance.⁸ Another, less extreme case involved a Honduran national utilizing shell companies to launder bribe payments through both residential and commercial real estate in the New Orleans area, making passive income from rent without any incentive to be a responsive landlord.⁹

FinCEN's Proposed Rule

We applaud FinCEN's proposed introduction of permanent, nationwide rules to begin to tackle the abuse of U.S. real estate markets by international and domestic criminals, tax evaders, and other bad actors. In addition to permanent, nationwide application, this proposed rule dramatically improves upon current anti-money laundering safeguards for residential real estate markets by:

- Applying the rule to a wide range of non-financed transfers, rather than only all-cash purchases, of residential properties;
- Applying to all non-financed transfers between relevant entity types, with no property value threshold applied;
- Requiring information on both the transferor and transferee (buyer and seller) of a given property;

⁷ RISE Economy (formerly the California Reinvestment Coalition), ANPRM Comment, February 2022, <https://www.regulations.gov/comment/FINCEN-2021-0007-0126>. See also, FACT Coalition, "Video: The Global Is Local: Linking the Fight Against Corruption with Fair Housing in the U.S.," September 9, 2021, <https://thefactcoalition.org/video-september-9th-panel-the-global-is-local/>.

⁸ USA Today (October 22, 2021), "The Backstory: Long before the Champlain Towers collapse, there was money laundering. Here's how we uncovered it," <https://www.usatoday.com/story/opinion/2021/10/22/there-was-money-laundering-surfside-heres-how-we-uncovered-it/8532276002/>

⁹ Organized Crime and Corruption Reporting Project (October 4, 2018), "US Court Sentences Honduran Man for Money Laundering," <https://www.occrp.org/en/daily/8694-us-court-sentences-honduran-man-for-money-laundering>

- Structuring reporting obligations in such a way that there is always someone responsible for filing required information for a covered transaction; and
- Covering transfers involving a number of entity types, including certain trusts.

Though FinCEN’s proposed rule represents an enormous improvement over the patchwork system of Geographic Targeting Orders (GTOs) that has been in place for a limited subset of residential real estate transactions since 2016, questions remain about how the measure will be enforced. Crucially, **FinCEN should specify strong penalties for failure to report required information** about a given transaction, in order to ensure that an otherwise effective rule cannot simply be ignored by bad actors.

While this rule applies robust reporting requirements to deter money laundering through residential real estate, **swift action must also be taken to address comparable risks in the commercial real estate sector**. Beyond the national and economic security implications of dirty money in U.S. commercial real estate markets, the opaque ownership of commercial real estate can also have disastrous results for tenants, workers, and local communities. Anonymous investors purchasing commercial properties for money laundering purposes have little interest in, or sense of responsibility for, the communities in which they are investing, often leaving those communities worse off than they found them.¹⁰ By shutting the door on illicit purchases of commercial real estate – particularly at a time when commercial developers are facing acute financial pressures, potentially heightening money laundering risks – FinCEN can help to ensure that vulnerable communities are not simply being used as piggy banks for foreign and domestic criminals.

We appreciate that FinCEN has announced its intention to issue a proposed rule curbing money laundering through commercial real estate later this year.¹¹ To the extent practicable, however, **the bureau should move quickly using any and all tools at its disposal – including potential stopgap measures in line with the current GTO program for residential real estate purchases – to begin to address this critical sector while a final rule is being developed and implemented.**

Conclusion

We thank you again for your efforts to address the vital issue of money laundering through U.S. real estate markets, and urge FinCEN to swiftly advance final regulations introducing ownership

¹⁰ See e.g., Foreign Policy (June 3, 2021), “The U.S. Midwest Is Foreign Oligarchs’ New Playground,” <https://foreignpolicy.com/2021/06/03/the-u-s-midwest-is-foreign-oligarchs-new-playground/>

¹¹ Office of Information and Regulatory Affairs (RIN: 1506-AB61, Publication ID: Fall 2023), “Commercial Real Estate Transaction Reports and Records,” <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=1506-AB61>

reporting requirements for both residential and commercial real estate transfers by the end of the year.

Please contact Caroline Nagy at caroline@ourfinancialsecurity.org with any questions pertaining to this comment.

Sincerely,

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Affordable Homeownership Foundation Inc.
Americans for Financial Reform
Beyond Housing, Inc.
Blue Water Community Action
Consumer Action
East Los Angeles Community Corporation
Global Intrinsic Value Foundation
HomeSource east tennessee
Housing Action Illinois
Housing and Community Development Network of New Jersey
Housing Opportunities of Fort Worth, Inc.
HPP Cares
Lifelines Counseling Services
Massachusetts Affordable Housing Alliance
MH Action
Miami Valley Community Action Partnership
National Community Stabilization Trust
National Fair Housing Alliance
National Housing Resource Center
NCCCED
NeighborGood Partners
Neighborhood Development Foundation
New America
Northwest Center
NWCS, Inc.
Parachute Credit Counseling, Inc.
Philadelphia Public Banking Coalition
PRG, Inc.
Private Equity Stakeholder Project
Revolving Door Project
Rise Economy

Telamon TRC
Ventura County Community Development Corporation
Washington County Community Development Agency
Youngstown Neighborhood Development Corporation