TI-U.S. Office
1100 13th St. NW
Suite 800
Washington, DC 20005
Tel: 614-668-0258
info-us@transparency.org
www.us.transparency.org

By electronic submission (via the Federal E-rulemaking Portal)

February 18, 2022

Mr. Himamauli Das
Acting Director
Financial Crimes Enforcement Network
U.S. Department of the Treasury
P.O. Box 39
Vienna, VA 22183

Re: Anti-Money Laundering Regulations for Real Estate Transactions, RIN 1506-AB54, Docket No. FINCEN-2021-0007

Dear Acting Director Das:

The U.S. office of Transparency International ("TI-US") appreciates the opportunity to provide comments on the Financial Crimes Enforcement Network's ("FinCEN") Advanced Notice of Proposed Rulemaking ("ANPRM") on issues pertinent to "Anti-Money Laundering Regulations for Real Estate Transactions."[1] We offer these comments to highlight our most significant concerns regarding money laundering in the U.S. real estate sector and our recommendations for an effective and practicable rule. We also offer our support to the comments submitted by Global Financial Integrity ("GFI"). As FinCEN works to develop a draft and final rule, please consider us partners in that effort.

TI-US is part of the largest global coalition dedicated to fighting corruption. With over 100 national chapters around the world, Transparency International ("TI") partners with businesses, governments, and citizens to promote transparency and curb the abuse of power in the public and private sectors.[2]

<u>Background</u>

The exploitation of U.S. real estate, especially by corrupt foreign officials, is now notorious and well-documented, with high-profile examples of such abuse[3] revealing the alarming extent of the problem. Foreign investors now account for one-third of all institutional

---

[1] *See* Financial Crimes Enforcement Network, "FinCEN Launches Regulatory Process for New Real Estate Sector Reporting Requirements to Curb Illicit Finance," Dec. 6, 2021, available at https://www.fincen.gov/news/news-releases/fincen-launches-regulatory-process-new-real-estate-sector-reporting-requirements.

[2] For more information about TI-US, please see our website at https://us.transparency.org/.

[3] *See, e.g.,* Konrad Putzier, "That Suburban Home Buyer Could be a Foreign Government," The Wall Street Journal, Apr. 13, 2021, available at https://www.wsj.com/articles/that-suburban-home-buyer-could-be-a-foreign-government-11618306380. *See also* Casey Michel & Paul Massaro, "The U.S. Midwest is Foreign Oligarch's New Playground," Foreign Policy, June 3, 2021, available at https://foreignpolicy.com/2021/06/03/the-u-s-midwest-is-foreign-oligarchs-new-playground/.

investment in single-family rental homes in the U.S.[4] Property purchased to house dirty money, rather than people, pushes American families out of their communities, increases real estate prices, hollows out communities, and harms local businesses. For example:

1. Ukrainian oligarch Igor Kolomoisky and his associates allegedly embezzled billions of dollars from a Ukraine-based bank and routed the money through a Cyprus branch before purchasing commercial real estate in Cleveland, Ohio, and Louisville, Kentucky, using anonymous shell companies.[5]
2. A former governor of a Mexican border state and presidential candidate pled guilty to accepting bribes and using the bribe money to purchase real estate in the United States, including in Port Isabel, Texas.[6]
3. A Dubai-based oil executive allegedly used money stolen from a Malaysian development fund to purchase high-end real estate in New York City and Beverly Hills.[7] The money was routed through anonymous shell companies in Europe and Asia before reaching the United States.[8] The executive ultimately agreed to a $49 million settlement with the U.S. Department of Justice ("DOJ") in 2020.[9]
4. A Venezuelan oil magnate pled guilty to laundering more than $1 billion through a complex currency exchange scheme involving a French company and a Russian bank, where some of the money allegedly ended up in real estate in the South Florida communities of Sunny Isles Beach and Coral Gables.[10]
5. According to investigative journalists with the Organized Crime and Corruption Reporting Project ("OCCRP"), a family moved hundreds of millions of dollars out of Kyrgyzstan using fraudulent loans and sham contracts in order to purchase real estate properties in countries around the world, including in California and near Washington, D.C.[11]
6. Last fall, the International Consortium of Investigative Journalists ("ICIJ") released the "Pandora Papers"[12]—the most high-profile exposé of global financial data in history—which, among other revelations, included stories of "Dairy farms in

---

[4] *See* Konrad Putzier, "That Suburban Home Buyer Could Be a Foreign Government," The Wall Street Journal, April 13, 2021, available at https://www.wsj.com/articles/that-suburban-home-buyer-could-be-a-foreign-government-11618306380.
[5] *See* Andrew E. Kramer, "U.S. Sanctions Key Ukrainian Oligarch, Ihor Kolomoisky," The New York Times, Mar. 5, 2021, available at https://www.nytimes.com/2021/03/05/world/europe/ukraine-sanctions-oligarch-kolomoisky.html.
[6] *See* The U.S. Department of Justice, U.S. Attorney's Office, Southern District of Texas, "Former Mexican governor and presidential candidate convicted of money laundering," March 25, 2021, available at https://www.justice.gov/usao-sdtx/pr/former-mexican-governor-and-presidential-candidate-convicted-money-laundering.
[7] *See* U.S. Department of Justice, "United States Reaches Settlement to Recover More Than $49 Million Involving Malaysian Sovereign Wealth Fund," May 6, 2020, available at https://www.justice.gov/opa/pr/united-states-reaches-settlement-recover-more-49-million-involving-malaysian-sovereign-wealth.
[8] *Id.*
[9] *Id.*
[10] *See* Keith Larsen, "Guilty plea in $1B money laundering scheme allegedly tied to SoFla real estate," The Real Deal, Nov. 1, 2018, available at https://therealdeal.com/miami/2018/11/01/former-venezuelan-oil-exec-pleads-guilty-in-1b-money-laundering-scheme/.
[11] *See* Organized Crime and Corruption Reporting Project, "A Real Estate Empire Built on Dark Money," December 23, 2019, available at https://www.occrp.org/en/plunder-and-patronage/a-real-estate-empire-built-on-dark-money.
[12] *See* International Consortium of Investigative Journalists, "Pandora Papers," available at https://www.icij.org/investigations/pandora-papers/.

> Tasmania, a shopping mall in Uganda and *rental homes in American suburbs* [that had] all been bought directly or indirectly through offshore companies or trusts."[13]

Through schemes like these, kleptocrats and other corrupt actors are able to steal from their own people and impoverish their home countries, while living well on their laundered money. Through a strong and effective rule, FinCEN must act now to plug holes through which illicit cash can flow, and help stop corrupt actors from hiding their illicit gains and undermining the U.S. financial system and real estate sector.

Money Laundering Risks in Real Estate Markets

TI has published extensive research on the money laundering risks in real estate markets around the world, including in the United States. In 2017, TI published a report titled *Doors Wide Open* that analyzed real estate markets in the United States, Australia, Canada, and the United Kingdom ("UK") that found several common and significant vulnerabilities across the four markets.[14] Among the most significant vulnerabilities uncovered by the report were:

1. **Inadequate compliance with anti-money laundering ("AML") standards.** None of the four countries reviewed, including the U.S., were fully compliant with their international commitments on AML safeguards for the real estate sector.[15]
2. **Collection and reporting of beneficial owners of legal entities, including trusts, and other legal arrangements, is lacking.** Aside from certain jurisdictions covered by FinCEN's Geographic Targeting Orders ("GTOs"), there is no requirement in the United States that real estate professionals identify the beneficial owners of legal entity customers.[16]
3. **Foreign companies can gain access to the U.S. real estate market with few AML requirements or checks.** Not even foreign companies are required to provide information on their beneficial owners to any sort of company registry in order to purchase residential or commercial property in the United States.[17]
4. **Over-reliance on AML obligations at financial institutions ignores risks in non-financed transactions.** The United States relies heavily on checks by financial institutions, leaving non-financed transactions uncovered.[18]
5. **The absence of required checks on politically exposed persons ("PEPs") and their family members and associates creates risk.** In the United States, Australia, and Canada, professionals involved in real estate closings are not required to verify whether customers are PEPs or family members or close associates of PEPs.[19] A GFI review of U.S. cases involving money laundering in real estate from 2015 to 2020 found that over half of such cases involved a PEP.[20]

[13] *See* Margot Gibbs & Agustin Armendariz, "Secret real estate purchases are a driving force behind the offshore economy," Nov. 3, 2021, available at https://www.icij.org/investigations/pandora-papers/secret-real-estate-purchases-are-a-driving-force-behind-the-offshore-economy/ (emphasis added).
[14] *See* Maíra Martini, "Doors Wide Open: Corruption and Real Estate in Four Key Markets," Transparency International, 2017, available at https://images.transparencycdn.org/images/2017_DoorsWideOpen_EN.pdf.
[15] *See id.* at 6.
[16] *See id.* at 20.
[17] *See id.* at 22.
[18] *See id.* at 23.
[19] *See id.* at 26.
[20] *See* Lakshmi Kumar & Kaisa de Bel, "Acres of Money Laundering", Global Financial Integrity, August 2021, available at https://secureservercdn.net/50.62.198.97/34n.8bd.myftpupload.com/wp-content/uploads/2021/08/Acres-of-Money-Laundering-Final-Version-2021.pdf?time=1644880222.

6. **Despite risk assessments, countries have been slow to adopt mitigation measures.** Three of the four countries, including the U.S., have conducted national money laundering risk assessments of the real estate sector, and in all cases high risks of money laundering have been reported. Despite these assessments, governments have been slow to adopt mitigation measures in response to identified vulnerabilities.[21]

Doors Wide Open concluded that the United States has severe deficiencies in every one of the above-listed areas.[22] And in a follow-up study in 2020, TI found little progress in addressing any of the above-listed deficiencies in any of the four markets, including the United States.[23]

The U.S.'s current AML legal framework for real estate is also largely not in line with its commitments made at international fora.[24] Writ large, its framework is simply not sufficient to effectively tackle corruption and money laundering in real estate. While the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism ("USA PATRIOT") Act of 2001 originally contained provisions requiring persons involved in real estate closings and settlements to establish an AML program,[25] they were granted temporary exemptions from that requirement by FinCEN[26] which have never been lifted.

Since January 2016, FinCEN has issued Geographic Targeting Orders ("GTOs"), which require title insurance companies in select metropolitan areas to report information on the beneficial owners of high-value residential real estate purchased in non-financed transactions. The coverage of the GTOs has been extended to new locations and for longer timescales. Yet outside of the GTOs, there are few restrictions or checks on foreign individuals or companies purchasing property without financing. At the same time, the U.S. National Association of Realtors has found that one out of three purchases by international clients are made without financing.[27]

GTOs are Insufficient
In 2016, FinCEN described the GTOs as "temporary" and indicated that the program would be important to "informing future regulatory approaches."[28] Since then, FinCEN has been clear that the GTOs have provided "valuable insights".[29] In a February 2017 statement

---

[21] *See id*. at 30.
[22] *See id*. at 9.
[23] *See generally* Maíra Martini & Theo Van der Merwe, "Real Estate Data: Shining a light on the corrupt," Transparency International, 2020, available at https://images.transparencycdn.org/images/2020-Report-Real-estate-data-Shining-a-light-on-the-corrupt.pdf.
[24] *See* Financial Action Task Force, "United States Mutual Evaluation Report," December 2016, 220- 221, available at https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf.
[25] Section 352(a) of the USA PATRIOT Act, which became effective on April 24, 2002, amended section 5318(h) of the Bank Secrecy Act ("BSA").
[26] *See* 31 CFR 103.170, as codified by interim final rule published at 67 FR 21110 (April 29, 2002, as amended at 67 FR 67547 (November 6, 2002) and corrected at 67 FR 68935 (November 14, 2002)).
[27] *See* National Association of Realtors, "2021 International Transactions in U.S. Residential Real Estate," July 26, 2021, available at https://cdn.nar.realtor/sites/default/files/documents/2021-international-transactions-in-us-residential-real-estate-07-26-2021.pdf.
[28] *See* Financial Crimes Enforcement Network, "FinCEN Expands Reach of Real Estate 'Geographic Targeting Orders' Beyond Manhattan and Miami," July 27, 2019, available at https://www.fincen.gov/news/news-releases/fincen-expands-reach-real-estate-geographic-targeting-orders-beyond-manhattan.
[29] *See* Ken Blanco, "Prepared Remarks of FinCEN Director Blanco at the NYU Law Program on Corporate Compliance and Enforcement," June 12, 2019, available at https://www.fincen.gov/news/speeches/prepared-remarks-fincen-director-blanco-nyu-law-program-corporate-compliance-and.

extending the GTOs, FinCEN reported that approximately 30 percent of the covered transactions involved an owner or purchaser that had been identified in a previous suspicious activity report ("SAR").[30]

At the same time, additional evidence of money laundering through the real estate sector has come to light (including many of the high-profile examples listed above). Shortcomings of the GTOs, as evidenced by the constantly changing provisions, including the addition of metropolitan areas and changing thresholds, strongly suggest that the orders are insufficient to address the size and scope of the problem. Based on insights gathered over the last six years from practitioners, other stakeholders, and the data itself, FinCEN should now move to a permanent rule that incorporates lessons learned from the GTOs.

Some Lessons Learned from the GTOs

The GTOs collect limited information for law enforcement and do so in ways that make it more difficult for industry to integrate into the sale and closing process.

Given the temporary nature of the GTOs and the ever-changing coverage and threshold provisions, FinCEN never created a specialized form. Instead, filers must figure out how to put GTO-required information into a form that is designed for a different purpose. These design features create uncertainty for real estate professionals, complicate efforts to standardize training opportunities, and disincentivize industry actors from creating online tools to facilitate implementation.

At the same time, certainty and broad coverage of AML responsibilities in the banking sector has led to a cottage industry created to streamline implementation and improve data collection while reducing implementation costs. [31]

Additionally, the ability to avoid title insurance, buy below the dollar thresholds, and purchase through exempt legal entities invite evasion by corrupt and other criminal actors.

Recommendations

FinCEN should replace the GTOs with a broader set of rules to better address identified risks. New rules should correct the deficiencies in the GTOs program and make additional improvements to assist law enforcement. Below are eight recommendations on key aspects of a new AML rule for the real estate sector.

1. ***Adopt a permanent rule***. The twelve GTO renewals, across three different presidential administrations, strongly suggests that the information gathered is highly useful to law enforcement. If temporary rules were ever justified, that is no longer the case. Uncertainty complicates implementation and raises costs on the real estate industry, as potential changes with each renewal prevent the development of standardized training programs and implementation software, which may undermine data quality. A rule without a specified end date would address these issues.

[30] *See* Financial Crimes Enforcement Network, "FinCEN Renews Real Estate 'Geographic Targeting Orders' to Identify High-End Cash Buyers in Six Major Metropolitan Areas," Feb. 23, 2017, available at https://www.fincen.gov/news/news-releases/fincen-renews-real-estate-geographic-targeting-orders-identify-high-end-cash.

[31] *See, e.g.,* Thomson Reuters, "CLEAR for anti-money laundering," available at https://rb.gy/ncvvs9.

2. ***Cover the entire country***. The current GTOs cover just twelve metropolitan areas. However, research has demonstrated that money-laundering risk reaches numerous and diverse real estate markets throughout the U.S.

   For example, a recent report by GFI, *Acres of Money Laundering* ("*Acres*"),[32] found that a majority of the real estate money laundering cases they reviewed between 2015 and 2020 were outside the metropolitan areas covered by the GTOs.[33] Whether the risk was always widespread, or the GTOs pushed criminals to non-covered jurisdictions, the threat is now undeniably nationwide. Recent DOJ actions involving real estate purchases by Igor Kolomoisky in Ohio and Kentucky, mentioned above, make clear that the belief that the problem is limited to the largest or wealthiest real estate markets is simply outdated.

3. ***Eliminate dollar thresholds***. When first issued, the GTOs relied on a narrowly targeted approach in setting varying dollar thresholds by jurisdiction to determine if a transaction was covered by the order.[34] There are several reasons such an approach was not sustainable through the expansion of the program.

   Varying thresholds meant that each time a new jurisdiction was added, a new threshold needed to be determined. Should FinCEN now issue a nationwide rule, numerous thresholds would need to be created, monitored, and periodically adjusted based on market changes. According to the U.S. Census Bureau, as of March 2020 there are 384 metropolitan statistical areas and 543 micropolitan statistical areas in the United States.[35] Varying thresholds would very likely be unworkable. While variable thresholds are unsustainable, even a single threshold is unwise. No one threshold will be seen as appropriate. Across jurisdictions, a single threshold will be over -or under-inclusive at a single dollar amount, creating pressure to constantly adjust threshold levels. Thresholds not only create costs and complexity for FinCEN, but also for the real estate industry. Eliminating thresholds potentially improves efficiency and leads to other desirable policy outcomes.

   For example, without thresholds, trade association trainings, materials, and other resources could be uniform and coordinated across the country. Access to nationally coordinated and produced resources would very likely improve implementation and data quality.

   Even single thresholds may push money launderers to reorganize their purchasing strategies. The *Acres* report found several instances in which bad actors laundered money through the purchase of below-the-threshold real estate.[36] Creating thresholds

---

[32] *See* Lakshmi Kumar & Kaisa de Bel, "Acres of Money Laundering: Why U.S. Real Estate is a Kleptocrat's Dream," Global Financial Integrity, Aug. 2, 2021, available at https://gfintegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream/.
[33] *Id*. at 34.
[34] *See* Financial Crimes Enforcement Network, "FinCEN Takes Aim at Real Estate Secrecy in Manhattan and Miami," Jan. 13, 2016, available at https://www.fincen.gov/news/news-releases/fincen-takes-aim-real-estate-secrecy-manhattan-and-miami.
[35] *See* U.S. Census Bureau, "About," available at https://www.census.gov/programs-surveys/metro-micro/about.html.
[36] *See generally* Lakshmi Kumar & Kaisa de Bel, "Acres of Money Laundering: Why U.S. Real Estate is a Kleptocrat's Dream," Global Financial Integrity, Aug. 2, 2021, available at https://gfintegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream/.

in a new rule would more likely provide a roadmap for evasion than alleviate filing burdens on public or private sector stakeholders.

Finally, eliminating thresholds, especially in the residential market, is unlikely to add many additional filings. The National Association of Realtors estimates that 87 percent of homebuyers financed their purchase[37]—suggesting most of the market would not be covered by a new rule. FinCEN should look at how many lower-cost purchases involve a legal entity that does not finance the purchase. The number may well represent only a marginal increase and not add any new burden to the overwhelming majority of transactions.

Since thresholds open the door to evasion, and as no single threshold will work for all jurisdictions, FinCEN should avoid adding unnecessary and potentially counterproductive thresholds as a condition of coverage.

4. ***Include commercial real estate***. Whether in the same rulemaking, simultaneous rulemaking(s), or a future rulemaking(s), FinCEN should explore AML responsibilities for commercial real estate purchases. Commercial transactions are often more complex than residential ones. Where residential purchases often involve one or two buyers, commercial transactions can have multiple buying groups. It is precisely the complicated nature, and lack of transparency, of these purchases that makes these transactions higher risk and thus worthy of being covered by a new rule.

   In addition to the cases of money laundering through commercial real estate identified in GFI's *Acres* report, FinCEN identified concerns as far back as 2006. In an analysis of the commercial real estate sector, FinCEN found that "Since 2003, the trend line in suspicious activity reporting associated with potential commercial real estate-related money laundering has risen steeply."[38]

   Commercial transactions, while more complex than residential transactions, still involve similar professionals. FinCEN should establish a hierarchy of responsible parties to mitigate opportunities for evasion of the rule. GFI research found that lawyers play an integral role in commercial real estate transactions and should be the primary party responsible for executing AML obligations.[39] Escrow agents and real estate agents, respectively, would follow. The responsible party should be licensed and registered to do business in the U.S.

   Covered transactions should extend to all commercial transactions, not simply ones that involve financing (however that term might be defined). Unlike residential transactions, commercial transactions often involve multiple buying units, some with financing and some without. Banks, the backstop on mortgage-financed residential purchases, are only required to perform AML due diligence on their direct clients.

[37] *See* National Association of Realtors, "2021 Highlights from the Profile of Home Buyers and Sellers," Nov. 11, 2021, available at https://www.nar.realtor/research-and-statistics/research-reports/highlights-from-the-profile-of-home-buyers-and-sellers.
[38] *See* Financial Crimes Enforcement Network, "Money Laundering in the Commercial Real Estate Industry," December 2006, available at https://www.fincen.gov/money-laundering-commercial-real-estate-industry.
[39] *See* Lakshmi Kumar & Kaisa de Bel, "Acres of Money Laundering: Why U.S. Real Estate is a Kleptocrat's Dream," Global Financial Integrity, Aug. 2, 2021, 29, available at https://gfintegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream/.

Those clients may only be a part of a larger buying group. Defining "financed transactions" in the commercial setting will leave significant gaps in the AML architecture that could be exploited by bad actors.

5. ***Align the definition of "beneficial owner" with the definition used in the Corporate Transparency Act***. FinCEN defined the term "beneficial owner" when issuing and renewing the GTOs.[40] A second definition of "beneficial owner" exists in FinCEN's Customer Due Diligence ("CDD") rule for financial institutions,[41] and FinCEN has proposed a third definition of "beneficial owner" as part of the December 2021 Notice of Proposed Rulemaking ("NPRM") to meet the requirements of the Corporate Transparency Act ("CTA").[42]

   Multiple definitions will likely yield conflicting information and sow confusion among filers. Law enforcement will not easily be able to cross-reference data, which may frustrate investigations. And FinCEN itself would be unable to do effective analysis of its own data.

   As FinCEN moves forward in the rulemaking process, it should conform the definition of "beneficial owner" across all its relevant programs. The CTA requires FinCEN to conform the CDD rule to the CTA,[43] which will result in two matching definitions. FinCEN should then use that definition for this rule, such that all three are consistent across relevant programs and industry sectors.

6. ***Expand coverage to include trusts***. The release of the Pandora Papers exposed how U.S. trusts are used to hide funds and purchase real estate (among other assets and investments). For example, according to the Pandora Papers, a Catholic order, disgraced by an international pedophilia scandal, secretly held nearly $300 million in U.S. real estate and other assets through a network of trusts and an investment company in Florida.[44] The funds were reportedly amassed at the same time victims of the sexual abuse were seeking compensation for the harm.[45]

   Transactions involving trusts that purchase real estate are not covered by the GTOs.[46] This creates significant vulnerability and, if not covered in a new rule, offers illicit actors a potentially easy and exploitable loophole. A related experience in the UK can be instructive. Consider that when the UK passed a beneficial ownership transparency law for companies, the law did not cover Scottish Limited Partnerships ("SLPs").

---

[40] *See, e.g.,* Financial Crimes Enforcement Network, "Geographic Targeting Order," July 27, 2016, available at https://www.fincen.gov/sites/default/files/shared/Title_Ins_GTO_Sample_072716.pdf.
[41] *See* Financial Crimes Enforcement Network, "Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions," April 3, 2018, available at https://www.fincen.gov/sites/default/files/2018-04/FinCEN_Guidance_CDD_FAQ_FINAL_508_2.pdf.
[42] *See* Financial Crimes Enforcement Network, "Fact Sheet: Beneficial Ownership Information Reporting Notice of Proposed Rulemaking (NPRM)," Dec. 7, 2021, available at https://www.fincen.gov/news/news-releases/fact-sheet-beneficial-ownership-information-reporting-notice-proposed-rulemaking.
[43] *See* The William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, H.R. 6395, 116th Cong. (2020) § 6403(d)(1).
[44] *See* Spencer Woodman, "As Catholic order fought sex abuse claims, secret trusts devoted to it poured millions into American rental properties," International Consortium of Investigative Journalists, Oct. 5, 2021, available at https://www.icij.org/investigations/pandora-papers/legion-of-christ-us-property-evictions-offshore/.
[45] *See id.*
[46] *See* American Land Title Association, "FinCEN Addresses GTO Questions," ALTA Blog, Sept. 13, 2016, available at https://blog.alta.org/2016/09/fincen-addresses-gto-questions.html.

Following implementation of the law, the number of registered SLPs increased by over 23,000 (430 percent) between 2007 and 2016.[47] The UK government has since closed the loophole to address the concerns that SLPs were being used to evade the law. FinCEN should avoid any similar and potentially costly mistake.

7. ***Expand the information to be collected***. Using the statutory authority provided by Congress via the BSA and the USA PATRIOT Act, FinCEN should require more traditional AML requirements for real estate professionals. We recognize there are some inherent differences between real estate, banking, and other sectors when it comes to customer relationships. For example, banks have an ongoing monitoring responsibility that does not translate to real estate transactions. Accounting for such differences, given the identified risks, FinCEN should expand customer due diligence/know your customer programs to the real estate sector.

   If FinCEN instead chooses a more specific reporting regimen for real estate,[48] there are high-value data collection practices that could be integrated into the existing sale and closing processes. For covered transactions, the GTOs currently require title insurance companies to collect and report the beneficial ownership information of the buyer(s). Any new tailored rules, at a minimum, must continue the beneficial ownership identification, verification, and reporting requirement while making the improvements outlined above (e.g., incorporate the definition of "beneficial owner" from the CTA rules, include trusts, cover all jurisdictions, and eliminate dollar thresholds). The information to be collected and reported should be consistent with the CTA, including the name, address, date of birth, and government-issued identification number for each beneficial owner.

   Additional reporting requirements should include documentation of the source of funds. Verifying occupation, income, bank account information, gifts, informal personal loans, and the sale of securities or other property are all data collected for real estate transactions involving mortgage-financed purchases. As such, FinCEN could proceed with confidence that such requirements are not without precedent and can be accomplished without undue disruption to the closing process.

   A risk-based rule would also include identification of PEPs as buyers. PEPs are widely recognized by regulators and standard-setting bodies as high-risk individuals.[49] FinCEN should provide guidance in order to define reportable domestic and foreign PEPs. This is not currently part of the GTO process, but should be an addition that can be as simple as adding a box to the FinCEN reporting form that filers could check if a PEP were involved.

8. ***Ensuring at least one responsible party.*** One significant problem with the implementation and effectiveness of the GTOs was the use of title insurance companies as the singular party responsible for collecting and reporting the appropriate information to FinCEN. These individuals are in the best position to

[47] *See* STV News, "Scot firms with business model tied to $1bn fraud probed," Jan. 11, 2018, available at https://archive.news.stv.tv/politics/1406010-scots-firms-with-business-model-tied-to-1bn-fraud-probed.html.
[48] *See* 31 U.S.C. § 5318(a)(2).
[49] *See* Financial Action Task Force, "FATF Guidance: Politically Exposed Persons (Recommendations 12 and 22)," June 2013, available at https://www.fatf-gafi.org/documents/guidance/documents/peps-r12-r22.html?hf=10&b=0&s=desc.

collect and report the information to FinCEN but the lack of an alternative responsible party for transactions that do not involve a title insurance company has opened the door to evasion.

Like the recommendation for commercial transactions, FinCEN should consider a sequence of individuals to whom the responsibility of data collection and reporting would fall. Such a provision would eliminate the opportunity for simple evasion of the rule by foregoing title insurance.

There are significant differences between commercial and residential transactions. As such, rules for residential transactions should involve a slightly different type and order of responsible parties. Again, looking to GFI's research on the role of various real estate professionals, as discussed above, as well as state laws governing transactions, FinCEN should consider the primary party to be the title insurance company, followed by the escrow agent, the lawyer, and then the real estate agent. The responsible party should be licensed and registered to do business in the U.S.

Conclusion

The risk of money laundering through the U.S. real estate market is now well-documented. These dangers extend across the U.S. financial system and the more than \$50 trillion[50] U.S. real estate market. An unchecked market provides lucrative investments for corrupt networks, and distorts markets that, in turn, disadvantage U.S. homebuyers and entrepreneurs, and erode communities. To effectively counter these money laundering threats, FinCEN should be clear and comprehensive in its future requests to Congress for funding to meet the challenge.

FinCEN is right to embark on a rulemaking to address the risk of money laundering through U.S. real estate. The above recommendations offer a path forward that, if incorporated into the final rule, will provide law enforcement with necessary information to hold corrupt and criminal actors accountable, and will do so in a way that integrates, as much as practicable, new requirements into existing industry practices and processes.

If you have any questions, or for additional information on TI's work in this regard, please contact Gary Kalman, Director of TI-US, at gkalman@transparency.org. Thank you for the opportunity to present these comments.

Respectfully submitted,

Gary Kalman
Director

Scott Greytak
Director of Advocacy

[50] *See* First National Realty Partners, "Commercial Real Estate and the Economy by the Numbers," Sept. 28, 2021, available at https://fnrpusa.com/blog/commercial-real-estate-numbers/. *See also* Zillow, "U.S. Housing Market has Doubled in Value since the Great Recession, Gaining \$6.9 Trillion in 2021," Jan. 27, 2022, available at https://www.zillow.com/research/us-housing-market-total-value-2021-30615/.