TRANSPARENCY INTERNATIONAL U.S.
fighting corruption, promoting democracy

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

January 13, 2025

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

Re: Agency Information Collection Activities; Proposed Collection; Comment Request; Real Estate Reports, Docket No. FINCEN-2024-0019, OMB Control No. 1506-0080

Dear Director Gacki,

Transparency International U.S. ("TI US") commends the U.S. Department of the Treasury ("Treasury") and the Financial Crimes Enforcement Network ("FinCEN") for issuing a request for comments regarding the means of collecting information required under the Anti-Money Laundering Regulations for Residential Real Estate Transfers final rule ("RRE Rule") published on August 29, 2024, regarding certain residential real estate transfers.

As the means through which covered individuals and entities will report the requisite information required by the RRE Rule to Treasury, this Draft Form is the most important document connected to the successful implementation of the RRE Rule. TI US helped inform and generate key support for the RRE Rule, and we welcome the Draft Form as a significant step toward the implementation of a new regime that holds much promise for so many victims of corruption across the world.

TI US is part of the largest global coalition dedicated to fighting corruption. With over 115 national chapters worldwide, Transparency International ("TI") partners with businesses, governments, and citizens to promote transparency and develop and implement effective measures to tackle and deter corruption, including by working to create, implement, and sustain accurate and effective anti-money laundering rules for the real estate sector.[1]

[1] *See, e.g.,* Transparency International, "Real Estate Data: Shining a Light on the Corrupt," December 2020, https://www.transparency.org/en/publications/real-estate-data-shining-a-light-on-the-corrupt. For more information on TI US and TI, please visit www.us.transparency.org (TI US) and www.transparency.org (TI).

Background & Overview

Corrupt foreign officials, kleptocrats, and other criminals' reliance on real estate as a means of hiding dirty money is one of the most well-documented, high-profile, and long-standing methods of escaping accountability across the world. The RRE Rule, set to go into effect on December 1, 2025, will go a long way toward curbing the abuse of the U.S. residential real estate sector by such criminals by instituting a nationwide, permanent requirement for certain parties to report the details of residential real estate transactions in which the transferee is a covered entity or trust. This regime will help bring genuine transparency to entities that have a long and established record of being used to move and hide illicit funds, including funds generated by corrupt activities, into and throughout the United States.

The RRE Rule appropriately focuses on high-risk transactions. These include non-financed purchases involving a covered entity, thereby exempting the vast majority of residential real estate transfers made by individuals with mortgages.

In short, the Draft Form requires information regarding the reporting person (the individual or entity submitting the report); the legal entity or trust receiving ownership of the property; the beneficial owner(s) of the entity or trust receiving the property; individuals signing documents on behalf of the transferee entity or trust during the transfer; the transferor of the property; the property itself; and transaction details.

Importantly, FinCEN allows reporting persons to reasonably rely on information provided by others when completing the report, provided that the reporting person has no reason to doubt its reliability. Regarding beneficial ownership information, however, this reliance is more restricted, as the information must come from the transferee or their representative, and, importantly, the transferee or representative must certify in writing that the information is accurate to the best of their knowledge. In particular, the report must include the following basic details about each beneficial owner: name, date of birth, address, government-issued ID number (e.g., Social Security number or passport number), as well as citizenship. For beneficial owners of transferee trusts, the reporting person must also specify if the beneficial owner(s) fits one or more roles (e.g., trustee, asset authority, beneficiary, grantor or settlor, and/or indirect beneficial owner).

Crucially, and appropriately, the Draft Form does not permit incomplete reports to be filed, meaning that all required fields must be completed before a report is submitted.

Recommended Changes

While the structure and content of the Draft Form does appropriately require that all relevant individuals with a meaningful interest in an entity or trust are appropriately disclosed, it would benefit from a few modest improvements as follows.

1. Treasury should provide easy-to-understand definitions for certain industry terms, including "beneficial owner," "hard money," and "private money."

FinCEN appropriately incorporates the definition of "beneficial owner" as used in the Corporate Transparency Act in the RRE Rule, yet does not appear to include a definition of the term in the Draft Form itself. To avoid confusion and potential inaccuracies, the Final Form should provide

a plain-language and accessible definition for this key term, as well as for the terms "hard money" and "private money," at the outset of the form. These definitions could be provided in italicized, instructive language, via a "float-over" information box, or by reference to external definitions provided elsewhere by Treasury and/or FinCEN.

2. The Final Form should provide instructions for what to do when a reporting person fits more than one category of responsible party.

Part 1, Question 4 of the Draft Form requires the reporting person to identify their role in the transfer by selecting one category from a list of seven options (e.g., person listed as a closing or settlement agent, person that prepares the closing or settlement statement, person that files the deed with the recordation office, etc.).

Yet because a reporting person will often perform more than one of these roles in a given transfer, confusion could be prevented with the addition of a clarifying instruction for such circumstances. This line could read: "*If multiple categories are applicable, please only select the first applicable category*" or something to that effect.

3. The Final Form should require the reporting of the state or comparable jurisdiction in which an entity or trust was registered or formed (if a transfer involves such an entity formed in the United States), as well as the means by which the funds used in the transfer were acquired, and whether the transfer involves a politically exposed person.

While Part IV, Question 69 of the Draft Form requires the reporting of a transferor entity's principal place of business, or the primary U.S. location where business is conducted, it does not require the reporting of the state or comparable jurisdiction in which it was registered or formed. This information would provide additional, useful information for law enforcement and national security purposes. As such, the Final Form could simply include a checkbox indicator asking whether the entity or trust was formed or is registered in the United States, and, if so, an input for the corresponding address type(s) and street address(es) to capture such information.

Second, 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 a transfer process. To this end, while the RRE Rule, and now Part V of the Draft Form, require the reporting person to collect certain information regarding payment (e.g., type of hard money, private money, or other similar loans used; payment amount and method; if applicable, legal name and account number for financial institution used), the reporting person is under no obligation to collect the source of the funds used in that payment/transfer. Nothing in the RRE Rule bars the collection of such information, and thus the Final Form could and should be amended to require some description, detail, or other information regarding the means by which the funds used in the transfer were acquired (e.g., business revenue, specified loan(s), equity capital, gift from a family member).

Finally, a risk-based rule would also include identification of politically exposed persons ("PEPs") as transferees or transferors, as PEPs are widely recognized by regulators, law enforcement, and standard-setting bodies as high-risk individuals. In particular, PEPs are understood to be high-risk individuals for corruption and associated money laundering crimes. For example, the seminal report *Acres of Money Laundering* found that over 50 percent of surveyed U.S. cases involving money laundering in real estate from 2015 to 2020 involved a PEP.[2] A Final Form that does not collect such information regarding the involvement of PEPs would also contrast with the reporting regimes of countries evaluated in our report *A Welcome Mat for Corruption,* in which we found that "in 20 of the 21 countries, covered persons or entities could be required to document whether a covered transaction involved a [PEP]."[3]

The ability of individuals such as Oleg Deripaska—one of Vladimir Putin's closest allies—to reportedly own properties in the United States through anonymous companies proves the necessity of this addition: A company in Delaware reportedly owns a $15 million mansion in Washington, DC that is linked to Deripaska, with a separate Delaware company reportedly connected to Deripaska owning a $14 million townhouse in New York City.[4] The same goes for members of the family of Teodorin Obiang, the authoritarian President of Equatorial Guinea, who allegedly embezzled millions of dollars from Equatorial Guinea that were then used to purchase luxury assets in the United States—including a mansion in California and "$1 million representing the value of other property"—through the use of shell companies.[5]

This important safeguard could be realized by simply adding boxes to Parts III and IV of the Final Form that capture whether a PEP was involved as either a transferor(s) or transferee(s).

4. The Final Form should include important certifications and associated penalties.

The Final Form must include a checkbox indicator in Part III that requires the reporting person to expressly certify that they do not have any knowledge of facts that would reasonably call into question the reliability of any beneficial ownership information provided to them by other persons, as well as a checkbox indicator, ideally at the end of the form, that requires the reporting person to expressly certify that they do not have any knowledge of facts that would reasonably

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[2] *See* Lakshmi Kumar & Kaisa de Bel, "Acres of Money Laundering", Global Financial Integrity, Aug. 2, 2021, https://gfintegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream/.

[3] *See* Transparency International U.S., "A Welcome Mat for Corruption," 8-11, Dec. 2023, https://us.transparency.org/resource/a-welcome-mat-for-corruption/.

[4] *See* Devlin Barrett, Spencer S. Hsu, and Rosalind S. Helderman, "FBI searches D.C., NYC homes connected to Russian oligarch Oleg Deripaska," Washington Post, Oct. 19, 2021, https://www.washingtonpost.com/national-security/fbi-searches-oleg-deripaska-property/2021/10/19/ff151070-30f6-11ec-9241-aad8e48f01ff_story.html.

[5] U.S. Department of Justice, "$26.6 Million In Allegedly Illicit Proceeds to Be Used To Fight COVID-19 and Address Medical Needs in Equatorial Guinea," Sept. 20, 2021, https://www.justice.gov/opa/pr/266-million-allegedly-illicit-proceeds-be-used-fight-covid-19-and-address-medical-needs.

call into question the reliability of the information provided in the form. Both checkbox indicators should include references to applicable criminal and/or civil penalties.

When a reporting person is reporting beneficial ownership information of transferee entities or transferee trusts, that person is permitted to rely on information provided by another person so long as the reporting person does not have knowledge of facts that would reasonably call into question the reliability of that information, and so long as the other person providing the beneficial ownership information *certifies* the accuracy of that information in writing to the best of their knowledge. However, when it comes to both beneficial ownership information and other information, the reporting person themself is not required to certify, via the form or elsewhere, that they do not have knowledge of facts that would reasonably call into question the reliability of the information, including the reliability of the beneficial ownership information provided to them. Such a requirement should be added to the Final Form.

Though the RRE Rule does not include the express requirement that the reporting person verify the beneficial ownership information provided to them (e.g., by requiring them to collect a copy of a driver's license, passport, or similar identifying document, and check the provided beneficial ownership information against it), thus undermining the integrity of the information collected via the new regime, this important goal could nevertheless be accomplished via the form itself by including in Part III simple instructions for collecting an identifying document and performing a cross-check between that document and the information provided by the other person. As discussed in our *Welcome Mat* report, in 20 of the 21 countries surveyed, at least one person or entity involved in a real estate transaction was required to not only collect, but to *verify*, beneficial ownership information.[6] These instructions should be followed by an express certification requirement and a statement disclosing the relevant penalties for noncompliance and providing false information to the U.S. Government.

Finally, to ensure the overall accuracy, completeness, and reliability of the information provided throughout the form, Treasury must include an express certification at the end of the form, and again disclose the relevant penalties for noncompliance, including penalties for the provision of false information to the U.S. Government (and what accompanying *mens rea*) would result in civil and/or criminal consequences, and for whom. Such a certification could read: "*I certify that I do not have any knowledge of facts that would reasonably call into question the reliability of the information provided, and that the information provided is true, correct, and complete*."

Conclusion

An unchecked U.S. residential real estate market has been shown to provide lucrative investments for corrupt networks, disadvantage U.S. homebuyers and entrepreneurs, and erode communities. The above recommendations offer a path forward that, if incorporated into the Final Form, will serve as important steps toward closing a serious gap in our county's anti-money laundering framework, while providing law enforcement with maximal information as permitted by law to hold corrupt and criminal actors accountable.

[6] *See* Transparency International U.S., "A Welcome Mat for Corruption," 3, Dec. 2023, https://us.transparency.org/resource/a-welcome-mat-for-corruption/.

We commend Treasury for its work thus far in the development and implementation of the RRE Rule and the Draft Form. By incorporating the above suggested changes, Treasury can ensure an accurate and effective Final Form that reflects the ambitions behind the RRE Rule.

Thank you for the opportunity to present these comments. If you have any questions, or for additional information on TI US's work in this regard, please contact Scott Greytak, Director of Advocacy for TI US, at sgreytak@transprency.org.

Respectfully submitted,

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