

Supporting Statement
OMB Control Number 1506-0080

Anti-Money Laundering Regulations for Residential Real Estate Transfers Necessitating
Collection of Information

1. Circumstances necessitating collection of information.

The Financial Crimes Enforcement Network (FinCEN) is issuing this statement to support its request that the Office of Management and Budget (OMB) approve a collection of information in a rule it is issuing under the authority of the Bank Secrecy Act (BSA). In this rule FinCEN requires certain domestic financial institutions to file specific reports and keep specific records about certain transfers of residential real estate.

The legislative framework generally referred to as the BSA consists of the Currency and Foreign Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107-56 (October 26, 2001), and other legislation, including the Anti-Money Laundering Act (AML Act).¹ The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1960, and 31 U.S.C. 5311–5314 and 5316–5336, and includes notes thereto, with implementing regulations at 31 CFR Chapter X. The Secretary of the Treasury (Secretary) is authorized to administer the BSA and to require financial institutions to keep records and file reports that “are highly useful in criminal, tax, or regulatory investigations or proceedings” or in the conduct of “intelligence or counterintelligence activities, including analysis, to protect against international terrorism.”² The Secretary delegated the authority to implement, administer, and enforce compliance with the BSA and its implementing regulations to the Director of FinCEN.³

The U.S. Department of the Treasury (Treasury) has long recognized the illicit finance risks posed by abuse of the U.S. residential real estate market and by legal entities and trusts used by criminals and corrupt officials to launder ill-gotten gains through transfers of residential real estate. FinCEN’s rule focuses on a particular class of activity that is high-risk for money laundering and that warrants reporting on a transaction-specific basis. The rule requires certain persons involved in real estate closings and settlements to submit reports and keep records on certain non-financed transfers of residential real property to certain legal entities and trusts. The reports would enhance transparency in the U.S. residential real estate market and assist Treasury, law enforcement, and national security agencies in protecting U.S. economic and national security interests. The rule describes the circumstances in which a report would be required to be filed, who would file a report, what information would be provided, and when the report

¹ The AML Act was enacted U.S. Department of the Treasury, as Division F, §§ 6001-6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, 134 Stat 3388 (2021).

² 31 U.S.C. 5311(1).

³ Treasury Order 180–01 (Jan. 14, 2020); *see also* 31 U.S.C. 310(b)(2)(I) (providing that the Director of FinCEN “[a]dminister the requirements of subchapter II of chapter 53 of this title, chapter 2 of title I of Public Law 91–508, and section 21 of the Federal Deposit Insurance Act, to the extent delegated such authority by the Secretary.”).

would be due.

2. Method of collection and use of data.

Under the rule, real estate professionals that perform specific functions in the closing of certain residential real estate transfers must collect specified information about the transfer and electronically provide a completed report to FinCEN by the later of the last day of the month following that in which ownership interest in the residential real property is transferred, or by 30 days after the transfer was closed. FinCEN has not yet proposed the forms that will be used in this information collection. To the extent and in the manner required by the Paperwork Reduction Act of 1995, FinCEN will provide public notice of, and request public comment on, proposed forms.

Federal, State, local, and Tribal law enforcement agencies, as well as certain regulators, will have access to the collected information through FinCEN's secure system, to monitor compliance, to develop leads, to aid in investigations, and to support prosecutions and asset recovery efforts around money laundering through non-financed residential real estate transfers and associated crimes.

3. Use of improved information technology to reduce burden.

FinCEN expects that compliance with the rule's requirements will necessitate the use of information technology systems to file the information requested by FinCEN. Reports will be filed electronically through the BSA E-Filing System. BSA E-Filing provides a fast, secure, convenient, and cost-effective method for submitting BSA reports.

4. Efforts to identify duplication.

The rule requires the collection of information on certain transfers that is not readily available to the government. The information is either not collected through other BSA reports, such as Currency Transaction Reports and Form 8300s, or, as discussed below with respect to beneficial ownership information, is partially collected but without a direct connection to potential money laundering through residential real estate. Although some of the same information that FinCEN seeks to collect under the rule is being collected under existing Residential Real Estate Geographic Targeting Orders, that program is limited in scope and duration, and will be replaced by the reporting requirement introduced by this rule.⁴

Certain information collected under this rule—most notably the identity of the beneficial owners of certain legal entities—will be collected and available to law enforcement in certain instances by virtue of the new beneficial ownership reporting requirements imposed by the Corporate Transparency Act (CTA) and implemented through the Beneficial Ownership Information Reporting Rule (BOI Reporting Rule).⁵ However, because that report and the report

⁴ See FinCEN, FinCEN Renews Real Estate Geographic Targeting Orders (Apr. 17, 2024), *available at* <https://www.fincen.gov/news/news-releases/fincen-renews-real-estate-geographic-targeting-orders>.

⁵ The BOI Reporting Rule implements the CTA's reporting provisions. In recognition of the fact that illicit actors frequently use corporate structures to obfuscate their identities and launder ill-gotten gains, the BOI Reporting Rule

that would be filed under this rule pertain to different facets of a single legal entity's activities, FinCEN believes it is appropriate for some of the same information to be reported on both forms. Furthermore, the CTA's reporting regime and this rule serve different purposes. The information reported under the CTA informs FinCEN about the reporting companies that have been formed or registered in the United States, while this rule will inform FinCEN about the legal entities, some of which may be "reporting companies" within the meaning of the BOI Reporting Rule, that have participated in reportable real estate transfers that Treasury believes to be at high risk for money laundering. This rule, by including beneficial ownership information and real estate transfer information in a single report, will enable law enforcement to investigate potential criminal activity in a timely and efficient manner, and will allow Treasury and law enforcement to connect money laundering through real estate with other types of illicit activities and to conduct broad money laundering trend analyses. Although some information about real estate purchases may, in some cases, be separately available through other sources, such as state land registries, the inclusion of both beneficial ownership information and real estate transaction information in a single report would enable law enforcement to access information about potential criminal activity in a more timely and efficient manner.

5. Methods to minimize burden on small businesses or other small entities.

This rule adopts a streamlined suspicious activity report (SAR) requirement, instead of imposing anti-money laundering and countering the financing of terrorism (AML/CFT) program and traditional SAR filing requirements. These traditional requirements could be especially burdensome to persons involved in the closing and settlement of real estate transfers, as many of them may be small businesses that likely cannot easily implement an AML program designed to identify and report suspicious activity.

Additionally, the rule allows reporting persons to reasonably rely on information provided by other persons. FinCEN believes that this reasonable reliance standard is significantly less burdensome to small entities than the alternative of requiring the reporting person to verify each piece of reportable information. Also, to limit potential burdens related to data storage costs and data security, the final rule does not adopt the proposed requirement that the reporting person retain a copy of the report filed with FinCEN.

The rule employs a reporting cascade designed to minimize reporting burdens and prevent duplication of effort by potential reporting persons, while minimizing the chance for reporting evasion by transferees. The reporting cascade determines who among the multiple real estate professionals that may participate in the closing of a given residential property transfer must file a report.

To further minimize reporting burdens, the rule also provides flexibility in determining the reporting person by giving the option to designate reporting responsibilities to another real estate professional involved in a given real estate transfer. This flexibility is intended to enable

requires certain legal entities to file reports with FinCEN to identify their beneficial owners. See 87 FR 59498 (Sept. 20, 2022), available at <https://www.federalregister.gov/documents/2022/09/30/2022-21020/beneficial-ownership-information-reporting-requirements>.

small businesses, that otherwise might be especially burdened by the reporting requirement, to reassign the bulk of the costs associated with the reporting obligation.

Additionally, some of the information that FinCEN seeks to collect is already collected by reporting persons in the normal course of business, and no special accounting or legal skills would be necessary to report any of the information required under the rule.

6. Consequences to the Federal government of not collecting the information.

Treasury has assessed that a key weakness in the U.S. AML/CFT regulatory regime is a lack of transparency in real estate transfers. This is particularly the case for non-financed transfers that are currently outside the purview of the due diligence requirements imposed on regulated financial institutions pursuant to the BSA. Furthermore, international bodies, such as the Financial Action Task Force (FATF), have recommended that the United States take appropriate action to address money laundering risks in relation to non-financed transfers of real estate.⁶

FinCEN believes that non-financed transfers of residential real property to certain legal entities and trusts pose a higher risk for money laundering than financed transfers of residential real property. In addition, due to their opacity, these transfers are more difficult to investigate than transfers of residential real property to individuals. The timely reporting of certain information about such transactions—including beneficial ownership of legal entities and trusts receiving ownership of residential real property; information about payments made; and information about the residential real property itself—will provide law enforcement with important investigative leads in order to take appropriate action if a given transfer was determined to be related to criminal activity, including tracing criminal proceeds, gathering additional evidence, seizing funds, and stopping the movement of illicit funds. Because the information will be reported within a maximum of 61 days of a reportable residential real estate transfer, the reports would aid law enforcement efforts to detect and deter illegal activity while it is still ongoing and discernible.

In addition to law enforcement and national security concerns regarding abuse of the residential real estate sector, money laundering through residential real estate can distort real estate development priorities and existing home prices, potentially making it more difficult for legitimate buyers and sellers to participate in the market.⁷

⁶ The White House, *United States Strategy for Countering Corruption*, (Dec. 2021), p. 22, available at <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>; U.S. Department of the Treasury, *National Money Laundering Risk Assessment* (Feb. 2022), p. 1, available at <https://home.treasury.gov/system/files/136/2022-National-Money-Laundering-Risk-Assessment.pdf>; Financial Action Task Force, *Anti-money laundering and counter-terrorist financing measures - United States Fourth Round Mutual Evaluation Report* (Dec. 2016), p. 3, available at <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/MER-United-States-2016.pdf.coredownload.inline.pdf>.

⁷ See, e.g., Richard Vanderford, “Fraudulent Covid Aid Drove Up U.S. House Prices, Report Says,” *The Wall Street Journal* (June 22, 2023), available at <https://www.wsj.com/articles/fraudulent-covid-aid-drove-up-u-s-house-prices-report-says-bfef67fa>.

7. Special circumstances requiring data collection to be inconsistent with guidelines.

Under 31 CFR 1010.430(d), all records that are required to be retained by 31 CFR Chapter X must be retained for a period of five years. Records must be kept for five years because they may relate to substantive violations of law that are subject to statutes of limitation longer than three years. This retention requirement applies to records of beneficial ownership certification and designation agreements used for a given transfer, if any.

8. Consultation with individuals outside of the agency on availability of data, frequency of collection, clarity of instructions and forms, and data elements.

On December 8, 2021, FinCEN published an advance notice of proposed rulemaking (the 2021 ANPRM) requesting comment on potential anti-money laundering regulations for certain real estate professionals. The 2021 ANPRM solicited public comment on whether and how to address money laundering vulnerabilities in the U.S. real estate market. Along with other aspects of real estate transfers, the 2021 ANPRM solicited comment on whether, in lieu of a transactional reporting requirement, FinCEN should promulgate AML/CFT program requirements and SAR filing requirements for persons involved in real estate closings and settlements, similar to those that are in place for banks and other financial institutions. FinCEN received 151 public comments from a wide variety of stakeholders, including real estate industry associations, law firms and associations, non-governmental organizations, credit unions, Members of Congress, academics, and members of the public. Approximately 41 were unique comments and 110 were uniform comments submitted by members of the title insurance industry. Several comments touched on subjects relating to data collection. For example, commenters were split in their opinions on whether FinCEN should require transactional reports or require persons involved in real estate closings and settlements to have full AML/CFT program obligations. FinCEN carefully considered all the comments that it received in response to the 2021 ANPRM in drafting the rule.

On February 16, 2024, FinCEN published a notice of proposed rulemaking (the 2024 NPRM) requesting comments on proposed anti-money laundering regulations for residential real estate transfers. The proposed rule would require certain persons involved in real estate closings and settlements to submit transaction-specific reports and keep records on high-risk non-financed transfers of residential real property to specified legal entities and trusts on a nationwide basis. FinCEN received 621 comments, 164 of which were unique, from a broad array of individuals, businesses, and organizations, including trade associations, transparency groups, law enforcement representatives, legal associations, and other interested groups and individuals.⁸ Comments touched on, among other things, subjects relating to data collection. For example, some commenters provided feedback on the various data elements that would be reported under the rule. FinCEN carefully considered all the comments that it received in response to the 2024 NPRM in drafting the final rule.

⁸ The comments can be found on www.regulations.gov under docket number FINCEN-2024-0005. See Regulations.gov, “Anti-Money Laundering Regulations for Residential Real Estate Transfers” (Feb. 16, 2024), available at <https://www.regulations.gov/document/FINCEN-2024-0005-0001/comment>.

9. Explanation of decision to provide any payment or gift to respondents.

No payments or gifts were made to respondents.

10. Assurance of confidentiality of responses.

The information collected will be available to Treasury, its designee, and other authorized agencies, as are other reports required to be reported under the BSA. All such information collections under the BSA must be used by such agencies consistent with a purpose set forth in 31 U.S.C. 5311, including, but not limited to, furthering a criminal, tax, or regulatory investigation, risk assessment, or proceeding, or use in intelligence or counterintelligence activities, including analysis, to protect against terrorism.

11. Justification of sensitive questions.

There are no questions of a sensitive nature in the collection of information. Any personally identifiable information collected under the BSA is strictly controlled as outlined in FinCEN's Privacy Act Systems of Records Notice for BSA reports.⁹

12. Estimated hour burden of information collection.

The time burden associated with information collection includes the reporting and recordkeeping components of the total burden incurred by both the reporting person and, in cases where various cascade parties enter into a designation agreement, the non-reporting person parties to the designation agreement.

Estimates pertaining to the number of respondents and their reporting and recordkeeping costs set forth below should be considered an upper bound of the anticipated potential burden because they are based on the assumption that, in cases where transaction-specific details are variable and unknown, the maximum cost to the maximum number of potential additional participants has been applied.

FinCEN estimates there may be up to approximately 172,753 potential reporting persons;¹⁰ however, the majority of these potentially affected reporting persons may never be required to file a report due to the nature of the reporting requirement and of the reporting cascade.¹¹ For a given reportable transfer, only one reporting person would be required to file a

⁹ 79 FR 20969, 20974 (Apr. 14, 2014).

¹⁰ This estimate is comprised of firms and their employees primarily engaged in business as defined by the following NAICS classifications (codes): Title Abstract and Settlement Offices (541191); Direct Title Insurance Carriers (524127); Other Activities Related to Real Estate (531390); Offices of Lawyers (541110); and Offices of Real Estate Agents and Brokers (531210).

¹¹ The types of businesses involved in a real estate closing or settlement vary depending on the type of transaction and on the jurisdiction, and so the cascade of real estate professionals in 31 CFR 1031.320(c) is itemized to capture a broad array of potential businesses. However, FinCEN believes that, for any transaction, the functions described in the first three tiers of the cascade would be performed by only one business, with no other separate business performing the other two functions. FinCEN therefore treats the cascade as having five functional groupings, rather than the seven laid out in the rule.

report in the manner prescribed by the rule.¹² The burden of information collection is therefore more appropriately calculated on a per response basis than per respondent.

Frequency: Once per reportable transaction.¹³

Estimated Total Annual Responses: 850,000

This estimate of total annual responses is based on a synthesis of publicly available and third-party sources of annual aggregate data with in-house analysis of records on new and existing homes, unimproved land intended for residential development, quit claims without financial consideration, and cooperatives.

Estimated Total Annual Burden Hours: 4,604,167 burden hours¹⁴

Estimated Burden per Response:

Per Response Burden to Reporting Persons

FinCEN estimates that the person who files a Real Estate Report and who is also a party to a designation agreement will incur a three-hour reporting burden and a recordkeeping burden of one hour and five minutes per response. Thus, the total burden to the reporting person per response is four hours and five minutes.

Per Response Burden to Non-Reporting Persons

FinCEN believes the maximum number of non-reporting persons per response is four.¹⁵ Each such party is expected to incur a fifteen-minute reporting burden and a five-minute recordkeeping burden, totaling 20 minutes in response time burden per non-reporting person; therefore, the total burden to non-reporting persons per response is one hour and twenty minutes.

Total Burden per Response

The total burden per response estimate includes the burden to the reporting person (four hours and five minutes) and to four non-reporting persons (one hour and twenty minutes). The total time burden per response is thus expected to be five hours and twenty-five minutes.

13. Estimated total annual cost burden.

12 The date of closing means the date on which the transferee entity or transferee trust receives an ownership interest in the residential real property.

13 The rule requires certain persons involved in real estate closings and settlements to submit reports on certain transfers of residential real property. The rule defines a reportable transfer as a non-financed transfer to a transferee entity or transferee trust of an ownership interest in residential real property, with certain exceptions.

14 850,000 reportable transfers x 325 minutes, converted to rounded hours.

15 See *supra* note 11.

Estimated Total Annual Reporting and Recordkeeping Cost: \$ 630,976,662.47¹⁶ The first table below (Table 1) presents FinCEN’s estimates of the various potential per-party per-transaction reporting costs associated with preparing and filing the Real Estate Report. The second table below (Table 2) presents FinCEN’s estimates of the various potential per-party per-transaction recordkeeping costs.

To estimate the reporting and recordkeeping costs conservatively, FinCEN assumes the maximum number of cascade participants in a given transaction (five) are parties to the designation agreement and that the reporting entity is always primarily employed by the candidate entity with the highest estimated wage rate (\$153.84/hr.).¹⁷ Estimates also include a \$0.10 cost per record retained that is meant to capture the technology cost of retaining documentation electronically.

Estimated Total Annual Reporting Cost:

Table 1: Transaction Reporting Costs

Estimated Per Transaction Reporting Costs		Non-Reporting Party		Reporting Party			
		Designation-Related		Designation-Related		Designation-Independent	
Primary Business Categories	Fully Loaded Hourly Wage	Time (hours)	Total	Time (hours)	Total	Time (hours)	Total
Title Abstract and Settlement Offices	\$79.35	0.25	\$19.84	0.25	\$19.84	2.75	\$218.21
Direct Title Insurance Carriers	\$106.49	0.25	\$26.62	0.25	\$26.62	2.75	\$292.85
Other Activities Related to Real Estate	\$81.74	0.25	\$20.43	0.25	\$20.43	2.75	\$224.78
Offices of Lawyers	\$153.84	0.25	\$38.46	0.25	\$38.46	2.75	\$423.07
Offices of Real Estate Agents and Brokers	\$81.74	0.25	\$20.43	0.25	\$20.43	2.75	\$224.78

Estimated Total Annual Recordkeeping Cost:

Table 2: Recordkeeping Costs Per Party

¹⁶ 850,000 reportable transfers x \$742.33 in estimated total cost per reportable transfer, rounded to the nearest cent. Differences between this estimated per-transaction cost and those presented subsequently are due to when rounding is performed.

¹⁷ This assignment is for estimation purposes only and is not intended to imply that FinCEN generally expects attorneys to be the reporting person for the average transaction.

Estimated Per Transaction Recordkeeping Costs		Non-Reporting Party		Reporting Party			
		Designation-Related		Designation-Related		Designation-Independent	
Primary Business Categories	Fully Loaded Hourly Wage	Time (minutes)	Total*	Time (minutes)	Total*	Time (hours)	Total* (unadjusted)
Title Abstract and Settlement Offices	\$79.35	5	\$6.71	5	\$6.71	1	\$79.45
Direct Title Insurance Carriers	\$106.49	5	\$8.97	5	\$8.97	1	\$106.59
Other Activities Related to Real Estate	\$81.74	5	\$6.91	5	\$6.91	1	\$81.84
Offices of Lawyers	\$153.84	5	\$12.92	5	\$12.92	1	\$153.94
Offices of Real Estate Agents and Brokers	\$81.74	5	\$6.91	5	\$6.91	1	\$81.84

* Total Recordkeeping cost estimates include both labor (wages) and technology costs (\$0.10)

Estimated Reporting and Recordkeeping Cost per Response:

Per Response Cost to Reporting Persons

FinCEN estimates that a person who files a Real Estate Report that is also a party to a designation agreement will incur a three-hour reporting burden. FinCEN further estimates the reporting person would incur a recordkeeping time burden of one hour and five minutes per response and a \$0.20 technology cost.¹⁸ As such, the total cost to the reporting person per response is estimated to be approximately \$628.39.¹⁹

Per Response Cost to Non-Reporting Persons

FinCEN believes the maximum number of non-reporting persons per response is four.²⁰ Each such person is expected to incur a fifteen-minute reporting burden. Each such person would also incur a five-minute recordkeeping time burden, as well as a \$ 0.10 technology cost associated with the designation agreement; therefore, the total burden to each non-reporting person per response is twenty minutes and \$ 0.10. Assuming that each non-reporting person is paid an hourly wage that corresponds to a different primary business category, and assuming that the reporting person already incurs costs at the highest wage rate, this implies the non-reporting person individual cost burdens are as follows: \$26.55 (Settlement Agents); \$35.60 (Title Insurers); \$27.35 (Other Real Estate Services); and \$27.35 (Real Estate Agents and Brokers).²¹

¹⁸ When a designation agreement exists, FinCEN anticipates an additional ten cent recordkeeping cost distinct from the ten cents estimated recordkeeping cost associated with filing the Real Estate Report.

¹⁹ Total may differ from tabular summation due to differences in when rounding is performed.

²⁰ See *supra* note 11.

²¹ Numbers here may differ from tabular and RIA estimates at the 0.01 level due to differences in rounding.

Therefore, the total per response cost to all non-reporting persons is expected to be approximately \$116.84.²²

Total Cost per Response

The total cost per response estimate includes the burden to the reporting person (\$628.38²³) and four non-reporting persons (\$116.84). The total cost per response is thus expected to be, at maximum, approximately \$745.22.

14. Estimated annual cost to the Federal government.

To implement the rule, FinCEN expects to incur certain operating costs that would include approximately \$8.5 million in the first year and approximately \$7 million each year thereafter. These estimates include anticipated novel expenses related to technological implementation, stakeholder outreach and informational support, compliance monitoring, and potential enforcement activities, as well as certain incremental increases to existing administrative and logistic expenses. Technological implementation for a new reporting form contemplates expenses related to development, operations, and maintenance of system infrastructure, including design, deployment, and support, such as a help desk. It includes an anticipated processing cost of \$0.10 per submitted report.

15. Reason for change in burden.

This is a new collection.

16. Plans for tabulation, statistical analysis, and publication.

The information will not be tabulated or compiled for publication.

17. Request not to display the expiration date of the OMB control number.

FinCEN requests that it not be required to display the expiration date so that the regulations will not have to be amended for the new expiration date every three years.

18. Exceptions to the certification statement.

There are no exceptions to the certification statement.

²² Total may differ from tabular summation due to differences in when rounding is performed.

²³ Assuming that the reporting person's primary occupation is in the offices of lawyers (*i.e.*, incurs the highest wage burden).