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FinCEN's Proposed New Rule to Increase Reporting Requirements in Residential Real Estate

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Overview and Background

On February 7, 2024, the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) proposed a new rule to increase reporting requirements for nonfinanced, entity-purchased residential real estate. FinCEN states that this additional reporting measure will combat and deter money laundering in the U.S. residential real estate sector by increasing transparency. FinCEN already has a Residential Real Estate Geographic Targeting Order (GTO) program, which requires title insurance companies to file reports identifying the beneficial owners of legal entities that make certain nonfinanced purchases of residential real estate. The proposed rule would build on FinCEN's previous Residential Real Estate GTO program and replace it with national reporting requirements.

The proposed rule targets "all cash" purchases by entities and trusts. FinCEN notes that bad actors attempt to avoid scrutiny from financial institutions that are bound by anti-money laundering (AML) and suspicious activity report (SAR) filing requirements under the Bank Secrecy Act by transacting only in cash. FinCEN further notes that these individuals typically hide their true identities by holding the residential real estate in the name of a legal entity or trust. Because FinCEN has identified these types of transfers as vulnerable to money laundering, it has concluded that the risk of illegal activity is sufficient to require reporting.

New Proposed Rule

The proposed rule would require certain professionals involved in real estate closings and settlements to report information to FinCEN about nonfinanced transfers of residential real estate to legal entities or trusts. This rule is specific to residential real estate transfers that FinCEN considers high risk for money laundering. The proposed rule does not require the reporting of such transfers made to individuals.

The proposed rule would require reporting on various types of residential real property transfers, including transfers of single-family houses, townhomes, condominium units, and interests in cooperatives, as well as buildings designed for occupancy by one to four families. It would also require reporting on transfers of vacant land which is zoned or has received a permit for a one- to four- family structure. There is no price threshold above or below which the reporting requirement would not apply.

The new proposed rule would require settlement agents, title insurance agents, escrow agents, and attorneys performing specified closing or settlement functions for the nonfinanced sale or transfer of residential real property to an entity or trust, to collect and report to FinCEN the following:

- Beneficial ownership information for the legal entity (transferee entity) or trust (transferee trust) receiving the property;
- Information about individuals representing the transferee entity or transferee trust;
- Information about the business filing the report (the reporting person);
- Information about the residential real property being sold or transferred;
- Information about the transferor/seller; and
- Information about any payments made.

FinCEN will accept written comments from the public in response to the proposed rule for 60 days following publication in the Federal Register. Currently, the publication is scheduled for February 16, 2024. For more information about the proposed new rule, please visit the Fact Sheet released by FinCEN detailing the requirements of the new proposed rule. If you have additional questions, please reach out to your primary contact at Troutman Pepper for assistance.

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