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Final Rule to Force Reports on Real Estate Owners Coming Soon

The new rule addresses money laundering by requiring the true identities of beneficial owners.

By **Erik Sherman** | August 14, 2023 at 08:31 AM

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An anti-money laundering rule in the works since December 2021, the ***Residential Real Estate Transaction Reports and Records***, which was expected in final version in the mid-third or fourth quarter of this year, might appear soon this month, according to a ***Reuters* report**.

There are many anti-money laundering regulations in effect for different sectors of the economy. Banks, for example, has a number of actions they must take as a normal course of business, such as getting proof of a new depositor's identity or reporting transactions over certain thresholds.

The upcoming rule is focused on real estate over concerns of how large cash property transactions can be a form of money laundering.

"We know that corruption's effects spill across borders," said Treasury Secretary Janet Yellen in a March 2023 speech. "We have seen corrupt foreign officials bury stolen funds in U.S.-based shell companies;

kleptocrats launder kickbacks through anonymous purchases of foreign real estate; and elites move corrupt proceeds through complicit or unwitting financial gatekeepers like attorneys or wealth managers." She further noted, "By one estimate, illicit actors laundered at least $2.3 billion through U.S. real estate between 2015 and 2020. And the real number is almost certainly much higher."

"The systemic money laundering vulnerabilities presented by the U.S. real estate sector, and consequently, the ability of illicit actors to launder criminal proceeds through the purchase of real estate, threatens U.S. national security and the integrity of the U.S. financial system," said the original **rule proposal in the Federal Registry**. "Accordingly, FinCEN intends to begin the rulemaking process to address such vulnerabilities. As a first step in this rulemaking process, FinCEN is issuing this ANPRM to seek initial public comment on questions that will assist FinCEN in the consideration and preparation of a proposed rule."

Although initially intended for residential real estate, an extension to CRE could also happen, as was originally noted: "If an iterative approach is warranted, FinCEN could initially focus on residential real estate followed by additional action to promulgate regulations covering the commercial real estate sector, as well as any other regulatory gaps that may exist with money laundering vulnerabilities involving real estate."

"It's going to put an onus on all of us to ensure that we know who our clients are and are effectively vetting our clients before we work for them," Michael Romer, managing partner of New York City real estate law firm Romer Debbas LLP, tells GlobeSt.com. "That is one area where professionals in the business are going to have greater responsibility. This is doubling down on an already existing practice to be sure we're extra careful."

Romer's firm already does preliminary checks, including using a database of the Office of Foreign Asset Control.

"In some cases, it has to do with politics, in some cases it has to do with retribution for their home government, and in others they don't want to subject themselves to liability," he adds. "Generally speaking, any time investors need to disclose their identity, it often impacts investment, especially with foreign countries."

Romer says that the title insurance companies will ultimately be the ones reporting beneficial owners. "Most large title insurance underwriters have this capability," Romer says. "The lawyers and real estate professionals not doing KYC [know your customer practices] on their clients absolutely need to start doing that."

He also thinks this could have an impact on the overall real estate industry. "The luxury high-end residential market in the US and major cities is driven to a substantial extent by non-US activity. Further restrictions on where the money comes from could absolutely impact these markets because individuals will be reluctant to move the money."