



MECHANIC'S LIENS PITFALLS!

AND

FINCEN:

NEW NATIONWIDE ANTI-MONEY LAUNDERING RULE

Hosted by All New York Title Agency, Inc.

Presenters:

Joseph S. Petrillo, Esq.

John M. Martin, Esq.

Tyler H. Gablenz, Esq.



FUNDAMENTALS OF THE MECHANIC'S LIEN



JOHN M. MARTIN, ESQ.
VP & General Counsel
All New York Title Agency

John M. Martin, Esq. is vice president and general counsel at All New York Title Agency, Inc. He has over 38 years legal experience in title insurance and real property matters. His responsibilities involve the legal operation of the company from review of routine title issues to closing the most complex commercial transactions.

Mr. Martin has handled the title insurance for numerous affordable housing matters involving the City of New York, including HPD, HDC, and NYCHA, the State of New York, including HFA, HCR and SONYMA, as well as many local and county housing agencies throughout New York. These affordable housing transactions involved non-profits, faith-based organizations as well as for-profit developers totaling hundreds of millions of dollars resulting in many thousands of new or rehabilitated housing units across the City and State of New York. Most of these matters involved complex financing including tax credits and state or city agency bonds and regulatory agreements.

John has chaired the Law Committee of New York State Land Title Association and served for 10 years as Chair of the Westchester County Bar Association's Real Property Section. Prior to All New York Title, Mr. Martin held positions in the title industry as claims counsel, New York and New Jersey state counsel and vice president of operations for a major title insurance underwriter.

DEFINITIONS

IMPROVEMENT

NY Lien Law § 2(4)

Improvement “includes the demolition, erection, alteration or repair of any structure...and any work done upon such property or materials furnished for its permanent improvement, and shall also include any work done or materials furnished in equipping any such structure with...apparatus for supplying gas or electric light and shall also include the drawing by any architect or engineer or surveyor, of any plans or specifications or survey...and shall also include the value of materials actually manufactured for but not delivered to the real property, and shall also include the reasonable rental value for the period of actual use of machinery, tools and equipment and...shall also include the performance of real estate brokerage services in obtaining a lessee for a term of more than three years...other than residential purposes pursuant to a written contract of brokerage employment or compensation.”

DEFINITIONS

COST OF IMPROVEMENT

NY Lien Law § 2(5)

Cost of improvement “means expenditures incurred by the owner in paying the claims of a contractor, an architect, engineer or surveyor, a subcontractor, laborer and materialman, arising out of the improvement...and payment of any benefits or wage supplements...and shall also include fair and reasonable sums paid for obtaining building loan and subsequent financing...sums paid to take by assignment prior existing mortgages...and also the interest charges on such mortgages, sums paid to discharge or reduce the indebtedness under mortgages...and provided further, that the payments have been made subsequent to the commencement of the improvement.”

DEFINITIONS

PUBLIC IMPROVEMENT

NY Lien Law § 2(7)

Public improvement “means an improvement of any real property belonging to the state or a public corporation; however, if the beneficial interest of an improvement is in an entity other than the state or a public corporation notwithstanding legal title being vested in an industrial development agency created under article eighteen-A of the general municipal law, then such improvement shall be considered an improvement of real property subject to mechanics’ liens....”

DEFINITIONS

BUILDING LOAN CONTRACT

NY Lien Law § 2(13)

Building loan contract “means a contract whereby a party thereto, in this chapter termed “lender,” in consideration of the express promise of an owner to make an improvement upon real property, agrees to make advances to or for the account of such owner....”

CONTENTS OF NOTICE OF LIEN

NY Lien Law § 9

The notice must include:

1. Lienor information

- Name and residence of the lienor
- If a partnership/corporation:
 - Business address
 - Names of partners or principals
 - Principal place of business (*if a foreign corporation, principal place of business in NY*)

2. Name and address of the lienor's attorney, if any

3. Parties involved

- Name of the property owner
- Name of the person who hired the lienor

4. Labor & Materials

- Description of labor performed or materials furnished
- Agreed price or value for labor performed/materials furnished/materials manufactured but not delivered

5. Amount unpaid to the lienor

6. Date of first and last work performed or materials supplied

7. Property description

- Sufficient description for identification
- Street and number (if known, in cities or villages)
- Whether the property subject to the lien is real property improved or to be improved with a single-family dwelling or not

FILING OF NOTICE OF LIEN

NY Lien Law § 10

- Filing Timeline
 - General Projects
 - During the progress of the work/material delivery; **OR**
 - Within 8 months after:
 - Completion of the contract
 - Final work performed
 - Final materials furnished
 - Single Family Dwellings
 - During the progress of the work/material delivery; **OR**
 - Within 4 months after:
 - Completion of the contract
 - Final work performed
 - Final materials furnished
- Where to File
 - Must be filed in the clerk's office of the county where the property is located.

SERVICE OF COPY OF NOTICE OF LIEN

NY Lien Law § 11

- Timing of Service
 - Lienor must serve a copy of the notice of lien to the owner
 - Within 5 days before; OR
 - Within 30 days after filing the notice of lien.
- Proof of Service Requirement
 - Must be filed with the county clerk within 35 days after the notice of lien is filed.
 - Failure to file proof of service terminates the notice as a lien.



MECHANIC'S LIEN DISCHARGE



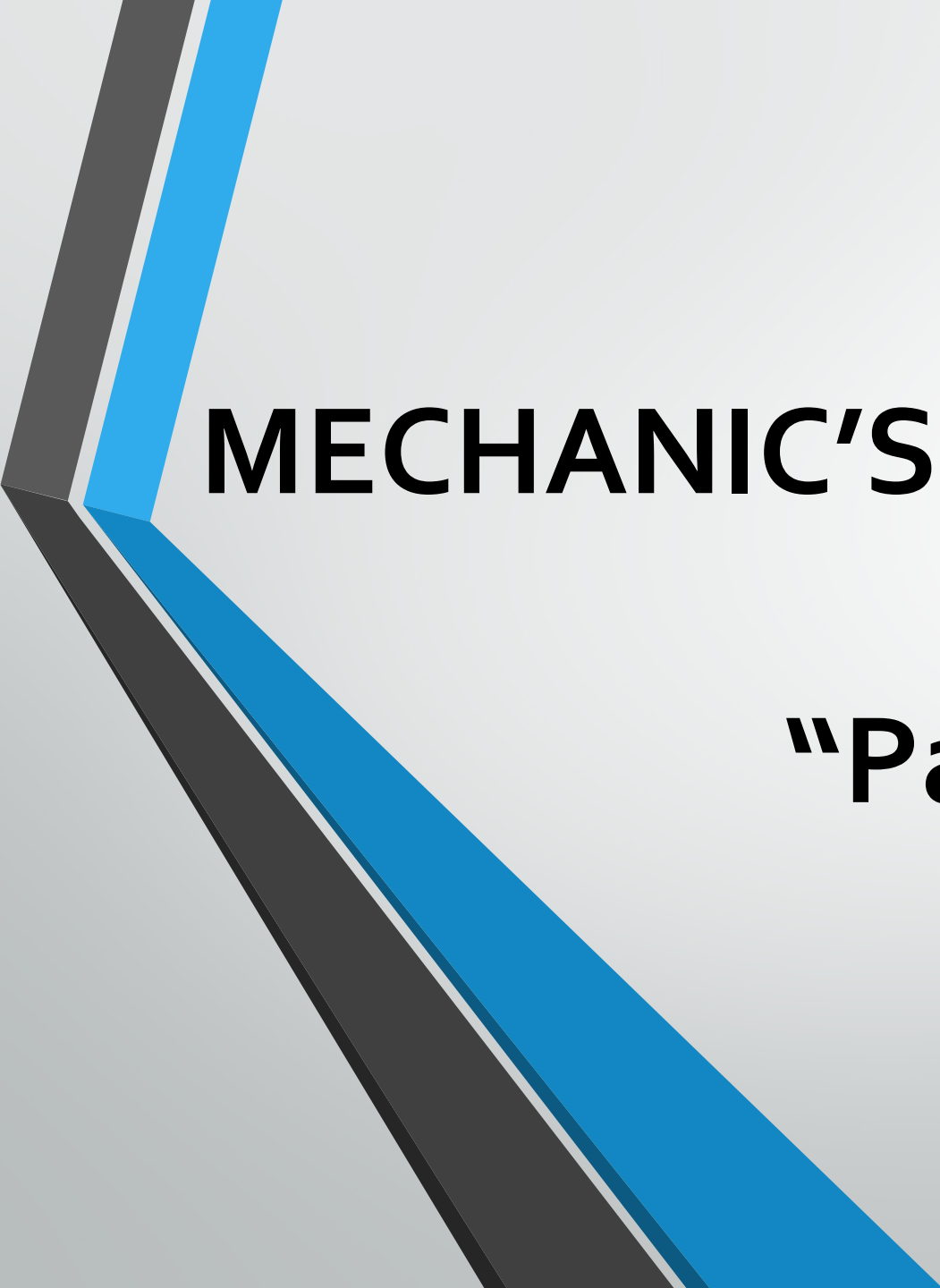
JOSEPH S. PETRILLO, ESQ.
President
All New York Title Agency

With over 40 years of legal experience in title insurance and real property law, Joe has coordinated, cleared, and closed many complex, sophisticated transactions.

In addition to being a founding member of All New York Title, Joe has held positions in the title industry as VP Regional Counsel, as Claims Counsel and Vice President/New York area manager for a major title insurance underwriter. Joe was active in the formation of the Title Insurance Rate Service Association (TIRSA) of NY State serving as its first President and contributed to developing the policies and procedures in the current TIRSA rate manual.

Prior to his involvement with the title industry, Joe was involved in preparing and submitting condominium and cooperative offering plans, bank closings, real estate acquisitions, construction financing and many other real property matters including multi-state and shopping center transactions.

He is a member of the Bar Associations of New York and Virginia, is a former Vice President and Executive Committee member of the New York State Land Title Association (NYSLTA) and currently sits on the Board of Directors of the New York State Association For Affordable Housing (NYSFAH)



MECHANIC'S LIEN DISCHARGE:

Discharge by “Payment into Court”

Discharge by “Payment into Court”

According to New York Lien Law § 20, a mechanic's lien can be discharged by making a payment into court.

*For general informational purposes only and does not constitute legal advice.
All New York Title and the presenters assume no liability for any errors or omissions.

New York Lien Law § 20

*"A lien specified in this article, other than a lien for performing labor or furnishing materials for a public improvement, **may be discharged after the notice of lien is filed at any time before an action is commenced to foreclose** such lien, by depositing with the county clerk, in whose office the notice of lien is filed, **a sum of money equal to the amount claimed in such notice, with interest to the time of such deposit.** After such deposit is made and the lien is discharged the county treasurer or any other officer with whom the money is deposited shall, within ten days thereafter, send a notice by mail to the lienor, at the address given in the lien, that such lien has been discharged by deposit. **After action to foreclose the lien is commenced** it may be discharged by a payment into court of such sum of money, as, in the judgment of the court or a judge or justice thereof, after at least five days' notice to all the parties to the action, will be sufficient to pay any judgment which may be recovered in such action.* Upon any such payment, the county clerk shall forthwith enter upon the lien docket and against the lien for the discharge of which such moneys were paid, the words "discharged by payment." A deposit of money made as prescribed in this section shall be repaid to the party making the deposit, or his successor, upon the discharge of the liens against the property pursuant to law. All deposits of money made as provided in this section shall be considered as paid into court and shall be subject to the provisions of law relative to the payment of money into court and the surrender of such money by order of the court. An order for the surrender of such moneys to the lienor or depositor may be made by any court of record having jurisdiction of the parties. If no action is brought in a court of record to enforce such lien, such order may be made by any judge of a court of record. If application for such order is made by lienor it shall be on notice to the depositor; if made by the depositor then on notice to the lienor."

Discharge by “Payment into Court”

- Before Foreclosure Action
 - Deposit with the county clerk the total lien amount plus accrued interest (from lien filing to deposit date)
 - Notify lienor by mail within 10 days of deposit, using the address in the lien, stating the lien is discharged by deposit
- After Foreclosure Action
 - Deposit amount set by the court or judge
 - Give at least 5 days’ notice to all parties in the action before deposit

Discharge by “Payment into Court”

- Westchester County
 - In-person payment is preferred for interest calculation purposes
 - Provide the following:
 - Cover letter stating that you are making a payment to discharge a mechanic’s lien, including the payment amount (which should include 9% interest calculated from the date the lien was filed through the date of deposit)
 - Copy of the mechanic’s lien that is to be discharged
 - W-9 Form

Discharge by “Payment into Court”

- Bronx County
 - Submission via mail or in-person
 - Original court order must be filed with the Law & Equity Department
 - Provide the following:
 - Completed form provided by the County Clerk’s office (*see handout*)
 - Check (e.g., certified, cashier’s, escrow account, or IOLA account), payable to the Bronx County Clerk
 - Payment amount, which includes 9% interest calculated from the date the lien was filed through the day after the funds are deposited with the Clerk’s office.
 - One copy of the court order certified by the County Clerk’s office **OR** attorney’s certification of the order
 - Self-addressed and stamped envelope addressed to the individual who is to receive the Depositor’s Copy and Cashier’s Receipt

Discharge by
"Payment into
Court"
Bronx County
Form

Receipt # _____

BRONX COUNTY CLERK'S OFFICE

_____	}	MECHANIC'S LIEN
_____		ML # _____
_____ <i>-against-</i> _____ <i>Claimant,</i>		For \$ _____ amount lien was filed for
_____ <i>Owner,</i>		Filed _____ date lien was filed
_____ <i>Contractor,</i>	}	Check # _____
_____		_____
_____		_____

Affecting property described as _____

And indexed against Block _____ Lot _____
on the Tax Map of the City of New York, Borough of Bronx _____

Bronx, N.Y., _____ 20__

Received from _____
_____ Dollars, (\$ _____)

as deposit in discharge of the above Mechanic's Lien. Whereby the said Lien has been "Discharged
by Payment, this _____ day of _____ 20__ , pursuant to Section 20 of
the Lien Law.

County Clerk of Bronx County.

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Discharge by “Payment into Court”

- New York County (Manhattan)
 - Payment amount, which includes 16% interest calculated from the date the lien was filed up to and including the day after the money is depositing with the County Clerk
 - Certified bank check
 - Provide an Affirmation requesting that the New York County Clerk discharge the lien pursuant to Section 20 of New York State Lien Law
 - A copy of the receipt must be presented to the clerk in Room 198B to be recorded against the subject lien

Discharge by “Payment into Court”

- Kings County (Brooklyn)
 - Payment amount, which includes 9% interest
 - Interest is calculated by the Clerk’s Office
 - Copy of the mechanic’s lien that is to be discharged
 - Payment methods (cash, attorney’s check, certified check)

Discharge by “Payment into Court”

- Queens County
 - Payment in-person
 - Before visiting the Clerk’s Office, must call the Law Department at (718) 298-0616. They will calculate the payment amount including 9% interest.
 - Copy of the mechanic’s lien that is to be discharged
 - Payment via certified check

Discharge by “Payment into Court”

- Richmond County (Staten Island)
 - Payment amount, which includes 9% interest from the date the lien was filed until the date of deposit
 - If making payment via certified funds, it can be mailed
 - If making payment via cash, it must be paid at the clerk’s office
- Provide the following:
 - Attorney Affirmation or Affidavit
 - Copy of the mechanic’s lien that is to be discharged
 - Block and Lot

Discharge by “Payment into Court”

- Nassau County
 - Must be in-person as the clerk’s office will be completing the required forms
 - Payment amount, which includes 9% interest calculated from the date the lien was filed until the date of deposit
 - Check payable to “Nassau County Treasurer’s Office”
 - The clerk’s office will transfer the payment to the Nassau County Treasurer’s Office
 - Filing fee of \$308, payable to “Nassau County Clerk”

Discharge by “Payment into Court”

- Suffolk County
 - Via mail or in-person
 - Provide the following:
 - Completed form (*see handout*)
 - Post-paid envelope
 - Certified funds for the amount required to be deposited plus 9% interest from the date the lien was filed until the date of deposit
 - \$3 filing fee

Discharge by "Payment into Court" Suffolk County Form

**CERTIFICATE OF COUNTY CLERK ON DEPOSIT OF MONEYS
INTO COURT OR PURSUANT TO STATUTE**

STATE OF NEW YORK
COUNTY OF SUFFOLK
____ COURT

Office of the County Clerk
Riverhead, NY

Date: _____, 20____

Purpose of Deposit¹:☐ Discharge Judgement²

☐	Tender into court to discharge stakeholder ²
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	Security for costs ²
--	---------------------------------

☐ to discharge a mechanic's lien³

☐ Other/Lien #: _____
(insert other purpose or Mechanic's Lien #)

Index No.: _____

I, **VINCENT PULEO**, the Clerk of the County of Suffolk, do hereby certify that I have this _____ day of _____

, 20____, received from _____ the sum of \$

_____, which sum I have deposited this same day with the Comptroller of the County of Suffolk.

Section A: funds deposited pursuant to the _____ of _____ Court dated _____

_____ and entered _____ and/or pursuant to § _____
of the _____ and deposited for the benefit of _____

Section B: funds deposited to discharge a mechanic's lien for \$ _____, filed in my office on _____

_____, by _____, claimant, against _____

_____ and against property
situated at _____

with TMN: -.-.-.

Insert the complete Tax Map Number of the property against which the mechanic's lien was filed. The complete number is 19 digits long and must include all leading and trailing zeroes. For example, the Town of Babylon is District 0100 (the leading "0" must be included).

County Clerk (Seal)

¹ Check one

² Complete the information in Section A

³ Complete the information in Section B

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DISCHARGE BY FILING BOND

According to New York Lien Law § 19(4), a mechanic's lien can be discharged by filing a bond. This bond replaces the property as the collateral, allowing the lien to be transferred to the bond, thereby freeing the property from the lien and enabling the owner to sell or refinance it.

DISCHARGE BY FILING BOND

- The Court of Appeals in *Morton v. Tucker*, 145 N.Y. 244 (1895) (citing *Ward v. Kilpatrick*, 85 N.Y. 413-418 (1881)) addressed the procedure and effect of a lien discharged by bond.

"The bond, as we have seen, is given to discharge the lien. It is one of the proceedings provided for by the statute, and it was evidently intended that the bond should take the place of the property and become the subject of the lien in the same form and manner as is provided for in the case of the payment of money into court, or the deposit of securities under an order of the court after action brought."

- When a mechanic's lien is discharged by filing a bond, the bond takes the place of the real property or fund against that was subject to the lien.

DISCHARGE BY FILING BOND

GENERAL PROCESS

- Obtain a bond
 - Secure a bond from a fidelity or surety company that is authorized to do business in New York and Certificate of Solvency under Section 1111 of the New York State Insurance Law
 - Bond amount must be 110% of the lien amount
 - Cost premium is 3-4%
- File with County Clerk
 - Submit the following documents to the County Clerk where the original lien was filed:
 - Bond
 - Certified copy of the issuing company's resolution
 - Original mechanic's lien
- Service
 - Natural Persons
 - Personal delivery to the intended recipient or their attorney
 - Registered or certified mail to the recipient's last known address
 - Corporations
 - Delivery of a copy to a corporate officer
 - Registered or certified mail to the corporation's last known address
 - A copy must be served upon the adverse party and proof of service must also be filed with the County Clerk
 - Note: We have previously seen that service by mail accompanied by an affidavit of service has been accepted as sufficient proof.

DISCHARGE BY FILING BOND

- New York County (Manhattan)
 - Must be filed in person
 - Documents to Present:
 - Copy of the mechanic's lien to be discharged
 - Bond (110% of lien amount), including:
 - Acknowledged signatures of Principle and Surety with printed names below the signatures
 - Property address and block/lot
 - Lien filed date
 - Power of Attorney for Surety Signatory
 - Statement that Surety is authorized to do business in NY or Certification of Solvency
 - Original, signed Affidavit of Service of the Bond on the Lienor
 - Affirmation requesting discharge under Lien Law § 19(4) and identifying the lien to be discharged
 - \$210 fee to purchase an index number
 - Obtain a No Fee Certified Copy of the Bond from the Certification Department and file it with the Judgment Docket and Lien Department

DISCHARGE BY FILING BOND

- Westchester County
 - Filing Options
 - In person or via overnight mail
 - Required Documents:
 - Cover letter requesting discharge of mechanic's lien, including block & lot number
 - Copy of the lien to be discharged
 - Bond (110% of lien amount)
 - Proof of service of the bond on the lienor
 - \$3 filing fee

DISCHARGE BY FILING BOND

- Bronx County
 - Purchase index number
 - \$210 fee
 - Required information
 - Block & Lot number
 - Relevant Lien Law sections
 - Parties involved
 - Surety bond details
 - Bond amount must be 110% of the lien

DISCHARGE BY
FILING BOND

Bronx County

8/28/2015
BOND DISCHARGING MECHANIC'S LIEN

Supreme Court of the State of New York
County of Bronx

Bond No. RNS01 [REDACTED]

In the Matter of the Application of
[REDACTED]

To Discharge a Certain Mechanic's Lien

Filed By:

[REDACTED] Construction Services, Ltd., Lienor.

WHEREAS, on the 29th day of July, 2015 [REDACTED] Construction Services, Ltd. filed a mechanic's lien for the sum of **Ninety Thousand Eight Hundred Forty Eight Dollars and Forty One Cents—(\$90,848.41)—Dollars**, in the office of the Clerk of the County of Bronx, against the real property known as [REDACTED], Bronx, New York, [REDACTED] and [REDACTED] Housing Development Fund Corporation, as Nominee for [REDACTED] Associates, L.P. and the leasehold interest of [REDACTED] as owner as more fully set forth in the notice of lien.

WHEREAS, in accordance with the newly amended Section 19(4) and 21(5) of New York Lien Law, [REDACTED] is required to file a bond for 110% of the lien amount for a total penalty of **Ninety Nine Thousand Nine Hundred Thirty Three Dollars and Twenty Five Cents —(\$99,933.25)—Dollars**.

WHEREAS, the said notice of lien purports to have been made and filed as prescribed in the Lien Law of the State of New York, being Chapter 38 of the Consolidated Laws of 1909, and all acts amendatory thereto, wherein said Lienor claims a lien against the above mentioned real property for and on account of labor performed and material furnished to [REDACTED] and [REDACTED] Housing Development Fund Corporation, as Nominee for [REDACTED] Associates, L.P.

NOW THEREFORE, in consideration of the discharge of said lien by the Clerk of the County of Bronx, that we [REDACTED], and the RLI Insurance Company, having an office and principal place of business at 9025 North Lindbergh Drive, Peoria, IL 61615, do hereby, pursuant to the statute in such case made and provided, jointly and severally undertake and become bound to the Clerk of the County of Bronx, in the sum of **Ninety Nine Thousand Nine Hundred Thirty Three Dollars and Twenty Five Cents —(\$99,933.25)—Dollars**, conditioned for the payment of any and all judgments, which may be rendered against said property, in favor of [REDACTED] Construction Services Ltd., their legal representatives or assigns, in any action or proceedings to enforce their alleged lien.

DATED: August 12, 2015

By: [REDACTED]

RLI Insurance Company

By: [REDACTED]

Matthew Wilkoff, Attorney-in-Fact

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DISCHARGE BY FILING BOND

Bronx County

Individual Acknowledgment

State of _____

County of _____

On the _____ day of _____, 20____, before me personally appeared _____

to me known and known to me to be the person described in and who executed the foregoing instrument and _____ he _____ thereupon acknowledged to me that _____ he _____ executed the same.

Notary Public

Partnership/L.L.C. Acknowledgment

State of _____

County of _____

On the _____ day of _____, 20____, before me personally appeared _____

to me known and known to me to be one of the firm of _____ described in and who executed the foregoing instrument and _____ he _____ thereupon acknowledged to me that _____ he _____ executed the same as and for the act and deed of said firm.

Notary Public

Corporate Acknowledgment

State of New York

County of Bronx

On the 12th day of August, 2015, before me personally appeared _____

to me known, who being by me duly sworn, did depose and say that _____ he _____ is the _____ President of the _____

the corporation described in and which executed the foregoing instrument; that _____ he _____ knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that _____ he has signed his/her name thereto by like order

Woluska Acosta
ACOSTA WALESKA

Notary Public, State of New York

No. 01AC8314/67

Qualified in Bronx County

Term Expires Nov. 17, 2018

8/12/15

Woluska Acosta
Notary Public

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DISCHARGE BY FILING BOND

Bronx County

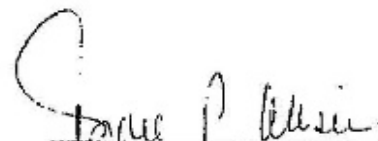
ACKNOWLEDGEMENT OF SURETY

State of New York }
 }
County of Nassau } SS.

On this August 12, 2015 before me, a Notary Public in and for said County, personally appeared Matthew Wilkoff personally known to me, who being by me duly sworn, did say that he/she is the aforesaid attorney-in-fact of the RLI INSURANCE COMPANY of Peoria, Illinois, a corporation duly organized and existing under the laws of the State of Illinois, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that the said instrument was signed, sealed and executed in behalf of said corporation by authority of its Board of Directors, and further acknowledge that the said instrument and the execution thereof to be a voluntary act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed by official seal the day and year last above written.

DIANE P. ALESCI
NOTARY PUBLIC, State of New York
No. 01AL6182545
Certificate Filed in Suffolk County
Commission Expires March 24, 2018



Notary Public

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DISCHARGE BY
FILING BOND

Bronx County



9025 N. Lindbergh Dr. | Peoria, IL 61615
Phone: (800)645-2402 | Fax: (309)689-2036

POWER OF ATTORNEY
RLI Insurance Company
Contractors Bonding and Insurance Company

Know All Men by These Presents:

That this Power of Attorney is not valid or in effect unless attached to the bond which it authorizes executed, but may be detached by the approving officer if desired.

That this Power of Attorney may be effective and given to either or both of RLI Insurance Company and Contractors Bonding and Insurance Company, required for the applicable bond.

That RLI Insurance Company and/or Contractors Bonding and Insurance Company, each Illinois corporations (as applicable), each authorized and licensed to do business in all states and the District of Columbia do hereby make, constitute and appoint:

Matthew Wilkoff, Gerald J. Wilkoff, Diane P. Alessi, Shirley Croker, jointly or severally

in the City of Mineola, State of New York, as Attorney in Fact, with full power and authority hereby conferred upon him/her to sign, execute, acknowledge and deliver for and on its behalf as Surety, in general, any and all bonds, undertakings, and recognizances in an amount not to exceed Ten Million Dollars (\$10,000,000.00) for any single obligation.

The acknowledgment and execution of such bond by the said Attorney in Fact shall be as binding upon this Company as if such bond had been executed and acknowledged by the regularly elected officers of this Company.

RLI Insurance Company and Contractors Bonding and Insurance Company, as applicable, have each further certified that the following is a true and exact copy of the Resolution adopted by the Board of Directors of each such corporation, and now in force, to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the Corporation shall be executed in the corporate name of the Corporation by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Corporation. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the Corporation. The signature of any such officer and the corporate seal may be printed by facsimile or other electronic image."

IN WITNESS WHEREOF, RLI Insurance Company and/or Contractors Bonding and Insurance Company, as applicable, have caused these presents to be executed by its respective Vice President with its corporate seal affixed this 11th day of February, 2015.

State of Illinois }
County of Peoria } SS



RLI Insurance Company
Contractors Bonding and Insurance Company

Roy C. Die [Signature] Vice President

On this 11th day of February, 2015, before me, a Notary Public, personally appeared Roy C. Die, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of the RLI Insurance Company and/or Contractors Bonding and Insurance Company, and acknowledged said instrument to be the voluntary act and deed of said corporation.

Jacqueline M. Bockler
Notary Public



CERTIFICATE

I, the undersigned officer of RLI Insurance Company, and/or Contractors Bonding and Insurance Company, each Illinois corporations, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable; and furthermore, that the Resolution of the Company as set forth in the Power of Attorney, is now in force. In testimony whereof, I have hereunto set my hand and the seal of the RLI Insurance Company and/or Contractors Bonding and Insurance Company this 12 day of August, 2015.

RLI Insurance Company
Contractors Bonding and Insurance Company

Roy C. Die [Signature] Vice President

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DISCHARGE BY FILING BOND

Bronx County

CERTIFICATE OF SOLVENCY UNDER SECTION 1111 OF THE NEW YORK INSURANCE LAW

STATE OF NEW YORK

DEPARTMENT OF FINANCIAL SERVICES

It is hereby certified that

RLI Insurance Company
Of Peoria, Illinois

a corporation organized under the laws of the State of Illinois and duly authorized to transact the business of insurance in this State, is qualified to become surety or guarantor on all bonds, undertakings, recognizances, guaranties and other obligations required or permitted by law; and that the said corporation is possessed of a capital and surplus including gross paid-in and contributed surplus and unassigned funds (surplus) aggregating the sum of \$849,296,846 (Capital \$10,000,375) as is shown by its sworn financial statement for the year ending December 31, 2014 on file in this Department, prior to audit.

The said corporation cannot lawfully expose itself to loss on any one risk or hazard to an amount exceeding 10% of its surplus to policyholders, unless it shall be protected in excess of that amount in the manner provided in Section 4113 of the Insurance Law of this State.

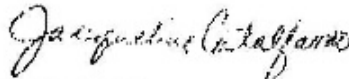


In Witness Whereof, I have

unto set my hand and affixed

official seal of this Department
in the City of Albany, this
28th day of April, 2015.

Benjamin M. Lawsky
Superintendent of Insurance

By 

Jacqueline Catalfamo
Special Deputy Superintendent

County Clerk notation
that Mechanic's Lien is
Discharged by Bond
may not be binding.

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DISCHARGE BY FILING BOND

Any such bond or undertaking shall be filed with the clerk of the county in which the notice of lien is filed, and a copy shall be served upon the adverse party. The undertaking is effective when so served and filed. If a certificate of qualification issued pursuant to subsections (b), (c) and (d) of section one thousand one hundred eleven of the insurance law is not filed with the undertaking, a party may except, to the sufficiency of a surety and by a written notice of exception served upon the adverse party within ten days after receipt, a copy of the undertaking. Exceptions deemed by the court to have been taken unnecessarily, or for vexation or delay, may, upon notice, be set aside, with costs. Where no exception to sureties is taken within ten days or where exceptions taken are set aside, the undertaking shall be allowed.

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All New York Title and the presenters assume no liability for any errors or omissions.

DISCHARGE BY FILING BOND

- Kings (Brooklyn), Richmond (Staten Island) and Nassau Counties
- Filing Requirements:
 - File bond with the County Clerk's Office, include:
 - Acknowledgement of Principal if a Corporation
 - Acknowledgement of Surety
 - Power of Attorney
 - Certificate of Solvency Under Section 1111 of the New York Insurance Law
 - Balance Sheet
 - Bond must be 110% of lien amount
 - Include block & lot number
 - Provide proof of service of the bond on the lienor
- No filing fee

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DISCHARGE BY FILING BOND

- Queens County
 - Purchase index number electronically
 - Bond must be 110% of lien amount
 - Bond information
 - Acknowledgement of Surety
 - Power of Attorney
 - Balance sheet
 - Certificate of Solvency under Section 1111 of the New York Insurance Law
 - Attorney's affirmation in support of application to discharge mechanic's lien
 - Affidavit of Service

DISCHARGE BY FILING BOND

- Suffolk County
 - Filing Requirements:
 - File bond with the County Clerk's Office
 - Bond must be 110% of lien amount
 - Certificate of qualification of the surety company
 - Certified copy of Resolution from the surety company
 - Block & lot number
 - Affidavit of Service of the bond on the lienor
 - No filing fee

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County Clerk Offices

Contact Information

County Clerk Offices - Contact Information

Westchester

110 Dr. Martin Luther King Jr. Blvd.,
White Plains, NY 10601
(914) 995-3070

Bronx

851 Grand Concourse
Bronx, NY 10451
(718) 618-3316

New York (Manhattan)

60 Centre Street, Room 109B
New York, NY 10007
(646) 386-5940

Kings (Brooklyn)

360 Adams Street
Brooklyn, NY 11201
(347) 404-9772

Queens

88-11 Sutphin Blvd
Jamaica, NY 11435
(718) 298-0612

Richmond (Staten Island)

130 Stuyvesant Place, 2nd Floor
Staten Island, NY 10301
(718) 675-7700

Nassau

240 Old Country Road
Mineola, NY 11501
(516) 571-2660

Suffolk

310 Center Drive
Riverhead, NY 11901
(631) 852-2000



DISCHARGE FOR FAILURE TO PROSECUTE

Discharge for Failure to Prosecute

Lien Law § 59

- A mechanic's lien may be discharged if the lienor fails to enforce it after receiving notice of bond filing or payment into court.
- The notice must give the lienor at least 30 days to:
 - commence an action to enforce the lien, or
 - show cause why it should not be discharged.
- If the lienor fails to act, the court may vacate the lien.
- An affidavit proving service of the notice and the lienor's failure to act must be submitted to apply for court's order to vacate the lien.

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DISCHARGE BY REASON OF DEFECTIVE LIEN

DISCHARGE BY REASON OF DEFECTIVE LIEN

- Lien Law § 19(6)
 - A mechanic's lien may be discharged if it contains a facial defect.
 - Examples:
 - No valid lien due to the nature of labor or materials furnished.
 - Failure to comply with the content requirements of the Notice of Lien pursuant to Lien Law § 9—such as including the name and residence of the lienor and their attorney, the unpaid amount, or a sufficient property description subject to the lien—may render the lien invalid.
 - Where public records show that the notice of lien was not filed within the required timeline, with the correct county clerk, or properly indexed by block number (if required), as required by Lien Law § 10.
 - A copy of the court application, including the time and place of the hearing, must be served on the lienor at least 5 days before the application is made to the court.
 - If the lienor cannot be located, the court may authorize an alternative method of service.



Publicly-Owned Property & Private Leasehold

Publicly-Owned Property & Private Leasehold

- Generally, a mechanic's lien cannot be filed on a private leasehold interest, even if it involves publicly-owned property.
 - *In the Matter of Paerdegat Boat and Racquet Club*, the Court of Appeals dismissed both the Section 3 and Section 5 claims, ruling that mechanic's liens cannot be filed against a leasehold interest in property owned by the City of New York. The Court reasoned that allowing such liens on municipal leaseholds would undermine the City's control over public assets and contradict established legal precedent and public policy, which protect government property from encumbrances or forced sales. *In the Matter of Paerdegat Boat and Racquet Club, Inc., Petitioner, and Electro-Thermal Systems, Inc., Appellant, v. Joseph Zarrelli, Respondent*, 57 NY.2d 966 (1982) (reversing 83 AD2d 444, 449-452 (2d Dep't 1981)).
- NY Lien Law § 2(7) provides that an IDA project may still be treated as private—and thus subject to a mechanic's lien—if a private entity holds the "beneficial interest," which includes:
 - Right to possess the property
 - Right to claim tax benefits
 - Right to purchase or secure title to the improvement

Publicly-Owned Property & Private Leasehold

- NY Lien Law § 2(7)

*The term "public improvement[]" ... means an improvement of any real property belonging to the state or a public corporation; however, if the beneficial interest of an improvement is in an entity other than the state or a public corporation notwithstanding legal title being vested in an industrial development agency then such improvement shall be considered an improvement of real property subject to mechanics' liens on real property **Nothing contained in this section shall create or be deemed to create any liability upon any industrial development agency for the payment of the cost of any improvement, or otherwise.** For the purposes of this subdivision the term "beneficial interest" shall mean the beneficial incidents of ownership of the improvement to include, but not be limited to, the right to possession, the right to claim tax benefits, if any, and the right to purchase or secure title to the improvement pursuant to an executory contract of sale, option agreement or lease.*

- *Matter of PMNC v. Brothers Insulation Co., Inc.* (2 Dept. 1999) 266 A.D.2d 293, 698 N.Y.S.2d 280

"[T]he 1992 amendments to Lien Law intended to exclude, from the definition of the term "public improvement", improvements located on real property owned by industrial development agencies in which a private entity had the beneficial interest."

Publicly-Owned Property & Private Leasehold

- In *TRM Architecture, Design & Planning, P.C. v. Destiny USA Holdings, LLC*, the Fourth Department affirmed the lower court's decision to grant the defendants' motion to dismiss the plaintiff's cause of action to foreclose its mechanic's lien. The lien named only the Syracuse Industrial Development Agency as the fee owner and did not name Destiny USA, the private developer that holds the beneficial interest, as defined in Lien Law § 2(7). 2019 NY Slip Op 09188, aff'd, 2018 N.Y. Slip Op. 33633.
 - "[T]he Legislature expressly stated that the IDA is not held liable in any manner and the IDA's fee interest is not the proper subject of the line, rather the beneficial interest of the private developer in the ownership interest in the property subject to a private improvement lien." *Id.*
- If a private developer holds the beneficial interest, the project is treated as private improvement, and you would file a mechanic's lien with the county clerk.
- Because the correct filing depends on the specific ownership and contractual structure of the IDA project, you should take these steps:
 - (1) Determine Ownership: Research the ownership of the property. For any work performed on publicly owned land, a public improvement lien is almost always the correct course of action.
 - (2) Investigate the Beneficial Interest: Determine if a private entity holds the beneficial interest. This is a complex issue, and prior court decisions have shown that lienors must be careful to name the correct party as "owner" in the lien notice to avoid having it dismissed.
 - (3) File the appropriate lien: Depending on your research, you will either file a public improvement lien against the project funds or a mechanic's lien against the beneficial interest of the private developer.
 - (4) Consider legal counsel: Given the complexities of filing against IDA projects, consult experienced attorney.



DISCHARGE FOR INTENTIONAL AND DELIBERATELY EXAGGERATED LIEN

DISCHARGE FOR EXAGGERATED LIEN

Lien Law § 39-A

- A lien is “willfully exaggerated” when the amount claimed is knowingly inflated.
 - Such lien is null and void.
- The lienor cannot recover any amount under the lien.
- The lienor may be held liable for damages, including:
 - cost of bond premiums used to discharge the lien;
 - any interest on funds deposited in court for the purpose of discharging the lien;
 - reasonable attorney’s fees for services rendered in securing the discharge of the lien; and
 - the difference between the lien amount and any actual amounts that are due or will become due.
- A lienor found to have willfully exaggerated a lien cannot file another lien based on the same claim.

DISCHARGE FOR EXAGGERATED LIEN

- In *Goodman v. Del-sa-co Foods*, the Court of Appeals held that Section 39-a imposes a penalty only on the portion of a lien that was willfully exaggerated, not on any part resulting from an honest mistake. Therefore, recovery requires specific findings of willful exaggeration. The Court remanded the case to the trial court, noting that although the lien had been voided for willful exaggeration, no specific findings were made regarding the extent of that exaggeration. 257 N.Y.S.2d 142, 15 N.Y.2d 191 (1965).

"[I]f section 39-a imposes a penalty to be measured by the amount of the willful exaggeration, recovery cannot be had in the absence of a finding of the items and amount of the willful exaggeration." - Id.



MECHANIC'S LIEN PRIORITY AND PARITY

Lien Parity

NY Lien Law § 13(1)

"A lien for materials furnished or labor performed in the improvement of real property shall have priority over a conveyance, mortgage, judgment or other claim against such property not recorded, docketed or filed at the time of the filing of the notice of such lien, except as hereinafter in this chapter provided; over advances made upon any mortgage or other encumbrance thereon after such filing, except as hereinafter in this article provided; and over the claim of a creditor who has not furnished materials or performed labor upon such property, if such property has been assigned by the owner by a general assignment for the benefit of creditors, within thirty days before the filing of either of such notices; and also over an attachment hereafter issued or a money judgment hereafter recovered upon a claim, which, in whole or in part, was not for materials furnished, labor performed or moneys advanced for the improvement of such real property; and over any claim or lien acquired in any proceedings upon such judgment. Such liens shall also have priority over advances made upon a contract by an owner for an improvement of real property which contains an option to the contractor, his successor or assigns to purchase the property, if such advances were made after the time when the labor began or the first item of material was furnished, as stated in the notice of lien. If several buildings are demolished, erected, altered or repaired, or several pieces or parcels of real property are improved, under one contract, and there are conflicting liens thereon, each lienor shall have priority upon the particular part of the real property or upon the particular building or premises where his labor is performed or his materials are used. **Persons shall have no priority on account of the time of filing their respective notices of liens, but all liens shall be on a parity"**



FINCEN: ANTI-MONEY LAUNDERING RULE EFFECTIVE 12-1-2025



TYLER GABLENZ, ESQ.
Vice President
Senior Underwriting Counsel
All New York Title Agency

Since joining All New York Title in 2015, Tyler has focused his work on identifying and resolving title issues for both the residential and commercial branches of the business. His responsibilities include preparing and reviewing title reports, assisting clients and attorneys with clearing title issues and serving as escrow agent for complex commercial closings.

Prior to joining All New York, Tyler gained experience in real estate transactions working for a top real estate law firm in Connecticut, while attending Quinnipiac University School of Law.

Tyler earned a law degree from Quinnipiac University School of Law in 2015 and was admitted to the New York State Bar in 2016.

What is FinCEN and the Anti-Money Laundering Rule Effective 12/1/2025?

- Financial Crimes Enforcement Network, a division located within the United States Treasury
- Concept for required reporting of certain residential real estate transaction with Geographic Targeting Orders (GTOs) in 2016.
- Beginning December 1, 2025 a new **permanent** rule takes effect that will not be limited to only certain “high-risk” counties/jurisdictions but will now be nationwide.
- What is the stated purpose of the new rule?
 - Increase transparency in the U.S. residential real estate market
 - Combat and deter use of residential real estate transactions for money laundering.
 - Identify actors intending to circumvent reporting requirements and scrutiny under certain provisions of the Bank Secrecy Act and Anti-terrorism laws.

Transactions Requiring Reporting under the new FinCEN reporting rule

- Definitions are key – a copy of the final rule is included in the materials.
- A report must be filed for any reportable transfer, which is defined as *a non-financed transfer to a transferee entity or transferee trust of an ownership interest in residential real property.*
- Residential Real Property is (i) 1-4 family dwellings, (ii) vacant land where construction of a 1-4 family is intended, (iii) a unit within a structure designed for 1-4 family occupancy (i.e. condo unit), and (iv) a share in a co-op.
- Entity or Trust includes corporations, partnerships, estates, associations, LLCs, and Trusts, with certain exemptions.
- Non-Financed Transfer is a transfer that does not involve a loan or line of credit secured by the property or a transfer that includes a loan or line of credit that is **not** subject to BSA, AML or SAR requirements (i.e. seller financing or private lender)

Reporting Process

- Required Information:
 - Information about the reporting person
 - Transferee Entity or Trust
 - Beneficial Owners of the Transferee Entity or Trust
 - Information about an individual signing for the Transferee Entity or Trust if not already disclosed as a Beneficial Owner
 - Information about the Transferor
 - Property Information
 - Consideration paid and certain details about the method of payment made.
- Reporting Person: "Reporting Person Cascade"
 - If a settlement agent is involved, they would be first, but otherwise it will fall to a title requirement as the entity who is recording documents and underwriting the title owner's policy.

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Chapter X

RIN 1506–AB54

Anti-Money Laundering Regulations for Residential Real Estate Transfers

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: FinCEN is issuing a final rule to require 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 specified legal entities and trusts on a nationwide basis. Transfers made directly to an individual are not covered by this rule. This rule describes the circumstances in which a report must be filed, who must file a report, what information must be provided, and when a report is due. These reports are expected to assist the U.S. Department of the Treasury, law enforcement, and national security agencies in addressing illicit finance vulnerabilities in the U.S. residential real estate sector, and to curtail the ability of illicit actors to anonymously launder illicit proceeds through transfers of residential real property, which threatens U.S. economic and national security.

DATES: Effective December 1, 2025.

ADDRESSES: The FinCEN Regulatory Support Section at 1–800–767–2825 or electronically at frc@fincen.gov.

SUPPLEMENTARY INFORMATION:**I. Executive Summary**

Among the persons required by the Bank Secrecy Act (BSA) to maintain anti-money laundering and countering the financing of terrorism (AML/CFT)¹ programs are “persons involved in real estate closings and settlements.”² For many years, FinCEN has exempted such persons from comprehensive regulation under the BSA. However, information received in response to FinCEN’s geographic targeting orders relating to non-financed transfers of residential real estate (Residential Real Estate GTOs) has demonstrated the need for increased transparency and further regulation of this sector. Furthermore, the U.S. Department of the Treasury (Treasury)

has long recognized the illicit finance risks posed by criminals and corrupt officials who abuse opaque legal entities and trusts to launder ill-gotten gains through transfers of residential real estate. This illicit use of the residential real estate market threatens U.S. economic and national security and can disadvantage individuals and small businesses that seek to compete fairly in the U.S. economy.

Earlier this year, pursuant to the BSA’s authority to impose AML regulations on persons involved in real estate closings and settlements, FinCEN proposed a new reporting requirement. Under the proposed rule, certain persons involved in real estate closings and settlements would be required to report on certain transfers that Treasury deems high risk for illicit financial activity—namely, non-financed transfers of residential real property to legal entities and trusts.

FinCEN is now issuing a final rule that adopts the proposed rule with some modifications. The final rule imposes a streamlined suspicious activity report (SAR) filing requirement under which reporting persons, as defined, are required to file a “Real Estate Report” on certain non-financed transfers of residential real property to legal entities and trusts. Transfers to individuals, as well as certain transfers commonly used in estate planning, do not have to be reported. The reporting person for any transfer is one of a small number of persons who play specified roles in the real estate closing and settlement, with the specific individual determined through a cascading approach, unless superseded by an agreement among persons in the reporting cascade. The reporting person is required to identify herself, the legal entity or trust to which the residential real property is transferred, the beneficial owner(s) of that transferee entity or transferee trust, the person(s) transferring the residential real property, and the property being transferred, along with certain transactional information about the transfer.

The final rule adopts a reasonable reliance standard, allowing reporting persons to rely on information obtained from other persons, absent knowledge of facts that would reasonably call into question the reliability of that information. For purposes of reporting beneficial ownership information in particular, a reporting person may reasonably rely on information obtained from a transferee or the transferee’s representative if the accuracy of the information is certified in writing to the best of the information provider’s own knowledge.

FinCEN has sought to minimize burdens on reporting persons to the extent practicable without diminishing the utility of the Real Estate Report to law enforcement and believes the final rule appropriately balances the collection of information that is highly useful to Treasury, law enforcement, and national security agencies against the burdens associated with collecting that information, particularly on small businesses.

II. Background*A. Addressing High-Risk Transfers of Residential Real Estate***1. Authority To Require Reports From Persons Involved in Real Estate Closings and Settlements**

The BSA is intended to combat money laundering, the financing of terrorism, and other illicit financial activity.³ The purposes of the BSA include requiring 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.”⁴ The Secretary of the Treasury (Secretary) has delegated the authority to implement, administer, and enforce compliance with the BSA and its implementing regulations to the Director of FinCEN.⁵

The BSA requires “financial institutions” to establish an AML/CFT program, which must include, at a minimum, “(A) the development of internal policies, procedures, and controls; (B) the designation of a compliance officer; (C) an ongoing employee training program; and (D) an independent audit function to test programs.”⁶ The BSA also authorizes the Secretary to require financial institutions to report any suspicious transaction relevant to a possible violation of law or regulation.⁷ Among the financial institutions subject to these

³ See 31 U.S.C. 5311. Section 6003(1) of the Anti-Money Laundering Act of 2020 defines the BSA as section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), Chapter 2 of Title I of Public Law 91–508 (12 U.S.C. 1951 *et seq.*), and 31 U.S.C. chapter 53, subchapter II. AML Act, Public Law 116–283, Division F, section 6003(1) (Jan. 1, 2021). Under this definition, the BSA is codified at 12 U.S.C. 1829b and 1951–1960, and 31 U.S.C. 5311–5314 and 5316–5336, including notes thereto. Its implementing regulations are found at 31 CFR Chapter X.

⁴ 31 U.S.C. 5311(1).

⁵ Treasury Order 180–01, Paragraph 3(a) (Jan. 14, 2020), available at <https://home.treasury.gov/about/general-information/orders-and-directives/treasury-order-180-01>.

⁶ 31 U.S.C. 5318(h)(1)(A)–(D).

⁷ 31 U.S.C. 5318(g).

¹ Section 6101 of the AML Act, codified at 31 U.S.C. 5318(h), amended the BSA’s requirement that financial institutions implement AML programs to also combat terrorist financing. This rule refers to “AML/CFT program” in reference to the current obligation contained in the BSA.

² 31 U.S.C. 5312(a)(2)(U).

requirements are “persons involved in real estate closings and settlements.”⁸

In particular, section 5318(g) of the BSA authorizes the Secretary to require financial institutions to report, via SARs, any “suspicious transactions relevant to a possible violation of law or regulation.”⁹ However, the BSA affords the Secretary flexibility in implementing that requirement, and indeed directs the Secretary to consider “the means by or form in which the Secretary shall receive such reporting,” including the relevant “burdens imposed by such means or form of reporting,” “the efficiency of the means or form,” and the “benefits derived by the means or form of reporting.”¹⁰ A provision added to the BSA by section 6202 of the Anti-Money Laundering Act of 2020 (AML Act) further directs FinCEN to “establish streamlined . . . processes to, as appropriate, permit the filing of noncomplex categories of reports of suspicious activity.” In assessing whether streamlined filing is appropriate, FinCEN must determine, among other things, that such reports would “reduce burdens imposed on persons required to report[,]” while at the same time “not diminish[ing] the usefulness of the reporting to Federal law enforcement agencies, national security officials, and the intelligence community in combating financial crime, including the financing of terrorism[.]”¹¹

2. Reporting High-Risk Transfers of Residential Real Estate

Most transfers of residential real estate are associated with a mortgage loan or other financing provided by financial institutions subject to AML/CFT program requirements. As non-financed transfers do not involve such financial institutions, such transfers can be and have been exploited by illicit actors of all varieties, including those that pose domestic threats, such as persons engaged in fraud or organized crime, and foreign threats, such as international drug cartels, human traffickers, and corrupt political or

business figures. Non-financed transfers to legal entities and trusts heighten the risk that such transfers will be used for illicit purposes. Numerous public law enforcement actions illustrate this point.¹² As such, FinCEN believes that

¹² As the Financial Action Task Force (FATF) noted in July 2022, “[d]isparities with rules surrounding legal structures across countries means property can often be acquired abroad by shell companies or trusts based in secrecy jurisdictions, exacerbating the risk of money laundering.” International bodies, such as the FATF have found that “[s]uccessful AML/CFT supervision of the real estate sector must contend with the obfuscation of true ownership provided by legal entities or arrangements[.]” FATF, “Guidance for a Risk Based Approach: Real Estate Sector” (July 2022), p. 17, available at <https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/RBA-Real-Estate-Sector.pdf.coredownload.pdf>; see, e.g., *U.S. v. Delgado*, 653 F.3d 729 (8th Cir. 2011) (drug trafficking, money laundering); *U.S. v. Fernandez*, 559 F.3d 303 (5th Cir. 2009) (drug trafficking, money laundering); Complaint for Forfeiture, *U.S. v. All the Lot or Parcel of Land Located at 19 Duck Pond Lane Southampton, New York 11968*, Case No. 1:23-cv-01545 (S.D.N.Y. Feb. 24, 2023) (sanctions evasion); Indictment and Forfeiture, *U.S. v. Maikel Jose Moreno Perez*, Case No. 1:23-cr-20035-RNS (S.D. Fla. Jan. 26, 2023) (bribery, money laundering, conspiracy); Motion for Preliminary Order of Forfeiture and Preliminary Order of Forfeiture, *U.S. v. Colon*, Case No. 1:17-cr-47-SB (D. Del. Nov. 18, 2022) (drug trafficking, money laundering); *U.S. v. Andrii Derkach*, 1:2022-cr-00432 (E.D.N.Y. Sept. 26, 2022) (sanctions evasion, money laundering, bank fraud); Doc. No. 10 at p. 1, *U.S. vs. Ralph Steinmann and Luis Fernando Vuitz*, 1:2022-cr-20306 (S.D. Fla. July 12, 2022) (bribery, money laundering); *U.S. v. Jimenez*, Case No. 1:18-cr-00879, 2022 U.S. Dist. LEXIS 77685, 2022 WL 1261738 (S.D.N.Y. Apr. 28, 2022) (false claim fraud, wire fraud, money laundering, identity theft); Complaint for Forfeiture, *U.S. v. Real Property Located in Potomac, Maryland, Commonly Known as 9908 Bentscross Drive, Potomac, MD 20854*, 8:2020-cv-02071 (D. Md. July 15, 2020) (public corruption, money laundering); Final Order of Forfeiture, *U.S. v. Raul Torres*, Case No. 1:19-cr-390 (N.D. Ohio Mar. 30, 2020) (operating an animal fighting venture, operating an unlicensed money services business, money laundering); *U.S. v. Bradley*, Case No. 3:15-cr-00037-2, 2019 U.S. Dist. LEXIS 141157, 2019 WL 3934684 (M.D. Tenn. Aug. 20, 2019) (drug trafficking, money laundering); Indictment, *U.S. v. Patrick Ifediba, et al.*, Case No. 2:18-cr-00103-RDP-JEO, Doc. 1 (N.D. Ala. Mar. 29, 2018) (health care fraud); Redacted Indictment, *U.S. v. Paul Manafort*, Case 1:18-cr-00083-TSE (E.D. Va. Feb. 26, 2018) (money laundering, acting as an unregistered foreign agent); *U.S. v. Miller*, 295 F. Supp. 3d 690 (E.D. Va. 2018) (wire fraud); *U.S. v. Coffman*, 859 F. Supp. 2d 871 (E.D. Ky. 2012) (mail, wire, and securities fraud); *U.S. v. 10.10 Acres Located on Squires Rd.*, 386 F. Supp. 2d 613 (M.D.N.C. 2005) (drug trafficking); *Atty. Griev. Comm’n of Md. v. Blair*, 188 A.3d 1009 (Md. Ct. App. 2018) (money laundering drug trafficking proceeds); *State v. Harris*, 861 A.2d 165 (NJ Super. Ct. App. Div. 2004) (money laundering, theft); U.S. Department of Justice, Press Release, “Associate of Sanctioned Oligarch Indicted for Sanctions Evasion and Money Laundering: Fugitive Vladimir Vorontchenko Aided in Concealing Luxury Real Estate Owned by Viktor Vekselberg” (Feb. 7, 2023), available at <https://www.justice.gov/usao-sdny/pr/associate-sanctioned-oligarch-indicted-sanctions-evasion-and-money-laundering>; U.S. Department of Justice, Press Release, United States Reaches Settlement to Recover More Than \$700 Million in Assets Allegedly Traceable to Corruption Involving Malaysian Sovereign Wealth Fund (Oct. 30, 2019),

the reporting of non-financed transfers to legal entities and trusts will benefit national security by facilitating law enforcement investigations into, and strategic analysis of, the use of residential real estate transfers having these particular characteristics to facilitate money laundering.¹³

Indeed, since 2016, FinCEN has used a targeted reporting requirement—the Residential Real Estate GTOs—to collect information on a subset of transfers of residential real estate that FinCEN considers to present a high risk for money laundering.¹⁴ Specifically, the Residential Real Estate GTOs have required certain title insurance companies to file reports and maintain records concerning non-financed

available at <https://www.justice.gov/opa/pr/united-states-reaches-settlement-recover-more-700-million-assets-allegedly-traceable>; U.S. Department of Justice, Press Release, “Acting Manhattan U.S. Attorney Announces \$5.9 Million Settlement of Civil Money Laundering And Forfeiture Claims Against Real Estate Corporations Alleged to Have Laundered Proceeds of Russian Tax Fraud” (May 12, 2017), available at <https://www.justice.gov/usao-sdny/pr/acting-manhattan-us-attorney-announces-59-million-settlement-civil-money-laundering-and>.

¹³ As explained in the notice of proposed rulemaking (NPRM) issued on February 16, 2024, while other investigative methods and databases may be available to law enforcement seeking information concerning persons involved in non-financed transfers of residential real property, the information obtained through such investigative methods or the databases themselves are often incomplete, unreliable, and diffuse, resulting in misalignment between those methods or sources and the potential risks posed by the transfers. For example, the non-uniformity of the title transfer processes across states and the fact that the recording of title information is largely done at the local level complicates and hinders investigative efforts. To presently verify how many non-financed purchases of residential real property a known illicit actor has made, law enforcement may have to issue subpoenas and travel to multiple jurisdictions—assuming that they are known—to obtain the relevant information. Law enforcement is also likely to experience difficulty in finding beneficial ownership information for legal entities or trusts not registered in the United States which have engaged in non-financed transfers of residential real estate. Furthermore, existing commercial databases do not collect much of the information that is the focus of this rule, such as that involving funds transfers. In these respects, a search of Real Estate Reports would be a far more efficient and complete mechanism. See FinCEN, NPRM, “Anti-Money Laundering Regulations for Residential Real Estate Transfers,” 89 FR 12424, 12430 (Feb. 16, 2024).

¹⁴ See 31 U.S.C. 5326; 31 CFR 1010.370; Treasury Order 180-01 (Jan. 14, 2020), available at <https://home.treasury.gov/about/general-information/orders-and-directives/treasury-order-180-01>. In general, a GTO is an order administered by FinCEN which, for a finite period of time, imposes additional recordkeeping or reporting requirements on domestic financial institutions or other businesses in a given geographic area, based on a finding that the additional requirements are necessary to carry out the purposes of, or to prevent evasion of, the BSA. The statutory maximum duration of a GTO is 180 days, though it may be renewed.

⁸ 31 U.S.C. 5312(a)(2)(U).

⁹ 31 U.S.C. 5318(g)(1)(A).

¹⁰ 31 U.S.C. 5318(g)(5)(B)(i)–(iii).

¹¹ See AML Act, section 6202 (codified at 31 U.S.C. 5318(g)(D)(i)(1)). Section 6102(c) of the AML Act also amended 31 U.S.C. 5318(a)(2) to give the Secretary the authority to “require a class of domestic financial institutions or nonfinancial trades or businesses to maintain appropriate procedures, including the collection and reporting of certain information as the Secretary of the Treasury may prescribe by regulation, to . . . guard against money laundering, the financing of terrorism, or other forms of illicit finance.” FinCEN believes this authority also provides an additional basis for the reporting requirement adopted in this final rule.

purchases of residential real estate above a specific price threshold by certain legal entities in select metropolitan areas of the United States. In combination with the numerous public law enforcement actions illustrating the heightened risks posed by non-financed transfers to legal entities and trusts, information obtained from the Residential Real Estate GTOs, as well as other studies conducted by Treasury and FinCEN, FinCEN has confirmed the need for a more permanent regulatory solution that would require consistent reporting of information about certain high-risk real estate transfers.

a. Benefits of Reporting

The Residential Real Estate GTOs have been effective in identifying the risks of non-financed purchases of residential real estate by providing relevant information about such transfers to law enforcement within specified geographic areas. Indeed, FinCEN regularly receives feedback from law enforcement partners that they use the information to generate new investigative leads, identify new and related subjects in ongoing cases, and support prosecution and asset forfeiture efforts. Law enforcement has also made requests to FinCEN to expand the Residential Real Estate GTOs to new geographic areas, which FinCEN has done multiple times, adding both additional metropolitan areas and methods of payment. This has provided law enforcement with additional insight into the risks in both the luxury and non-luxury residential real estate markets.

The Residential Real Estate GTOs have also proven the benefit of having reports identifying high risk residential real estate transfers housed in the same database as other BSA reports, such as traditional SARs and currency transaction reports (CTRs). For example, housing reports filed under the Residential Real Estate GTOs in the same database as other BSA reports enables FinCEN to cross-reference identifying information across reports, and having done so, FinCEN has been able to determine that a substantial proportion of purchases reported under the Residential Real Estate GTOs have been conducted by persons also engaged in other activity that financial institutions have characterized as suspicious. Specifically, FinCEN has found that from 2017 to early 2024, approximately 42 percent of non-financed real estate transfers captured by the Residential Real Estate GTOs were conducted by individuals or legal entities on which a SAR has been filed.

In other words, individuals engaging in a type of transaction known to be used to further illicit financial activity—the non-financed purchase of residential real estate through a legal entity—are also engaging in other identified forms of suspicious activities. The ability to connect these activities across reports allows law enforcement to efficiently identify potential illicit actors for investigation and build out current investigations.

b. Necessity of a Permanent Nationwide Reporting Requirement

The Residential Real Estate GTOs, while effective within the covered geographic areas, do not address the illicit finance risks posed by certain real estate transfers on a nationwide basis—a significant shortcoming. For instance, a study of money laundering through real estate in several countries by Global Financial Integrity, a non-profit that studies illicit financial flows, money laundering, and corruption, found that, of Federal money laundering cases involving real estate between 2016 and 2021, nearly 61 percent involved at least one transfer in a county not covered by the Residential Real Estate GTOs. FinCEN believes that money laundering through real estate is indeed a nationwide problem that jurisdictionally limited reporting requirements are insufficient to address.¹⁵ Furthermore, the Residential Real Estate GTOs were also intended to be a temporary information collection measure. Thus, FinCEN believes that a more comprehensive and permanent regulatory approach is needed.

B. The Notice of Proposed Rulemaking

On February 16, 2024, FinCEN published a notice of proposed rulemaking (NPRM) proposing a reporting requirement to address the risks related to non-financed transfers of residential real estate to either a legal entity or trust on a nationwide basis.¹⁶ The proposal targeted the transfers that posed a high risk for illicit finance and was built on lessons learned from the Residential Real Estate GTOs and from public comments received in response to an Advance Notice of Proposed

Rulemaking.¹⁷ Importantly, the NPRM was narrowly focused and did not propose a reporting requirement for most transfers of residential real estate—for example, it excluded purchases that involve a mortgage or other financing from a covered financial institution, as well as any transfer, including all-cash transfers, to an individual.

In the NPRM, FinCEN proposed that certain persons involved in residential real estate closings and settlements file a version of a SAR—referred to as a “Real Estate Report”—focused exclusively on certain transfers of residential real property. The persons subject to this reporting requirement were deemed reporting persons for purposes of the proposed rule. Under the proposed rule, a reporting person would be determined through a “cascading” approach based on the function performed by the person in the real estate closing and settlement. The proposed cascade was designed to minimize burdens on persons involved in real estate closings and settlements, while leaving no reporting gaps and creating no incentives for evasion.¹⁸ To provide some flexibility in this reporting cascade, FinCEN’s proposal included the option to designate (by agreement) a reporting person from among those in the cascade.

As proposed, information to be reported in the Real Estate Report would identify the reporting person, the legal entity or trust (including any legal arrangement similar in structure or function to a trust) to which the residential real property was transferred, the beneficial owners of that transferee entity or transferee trust, the person that transferred the residential real property, and the property being transferred, along with certain transactional information about the transfer. Regarding beneficial ownership information that a reporting person would be required to report, the rule proposed that a reporting person could collect such information directly from a

¹⁷ See FinCEN, Advance Notice of Proposed Rulemaking, “Anti-Money Laundering Regulations for Real Estate Transactions,” 86 FR 69589 (Dec. 8, 2021).

¹⁸ Through the proposed reporting cascade hierarchy, a real estate professional would be a reporting person required to file a report and keep records for a given transfer if the person performs a function described in the cascade and no other person performs a function described higher in the cascade. For example, if no person is involved in the transfer as described in the first tier of potential reporting persons, the reporting obligation would fall to the person involved in the transfer as described in the second tier of potential reporting persons, if any, and so on. The reporting cascade includes only persons engaged as a business in the provision of real estate closing and settlement services within the United States.

¹⁵ Global Financial Integrity, “Acres of Money Laundering: Why U.S. Real Estate is a Kleptocrat’s Dream” (Aug. 2021), p. 26, available at <https://gfinetegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream/>. According to its website, Global Financial Integrity is “a Washington, DC-based think tank focused on illicit financial flows, corruption, illicit trade and money laundering.” See Global Financial Integrity, “About,” available at <https://gfinetegrity.org/about/>.

¹⁶ See *supra* note 13.

transferee or a representative of the transferee, so long as the person certified that the information was correct to the best of their knowledge. On the timing of the reports, the proposed rule stated that the reporting person was required to file the Real Estate Report no later than 30 days after the date of closing.

C. Comments Received

In response to the NPRM, FinCEN received 621 comments, 164 of which were unique. Submissions came from a broad array of individuals, businesses, and organizations, including trade associations, transparency groups, law enforcement representatives, and other interested groups and individuals.

General support for the rule was expressed by law enforcement officials, transparency groups, certain industry associations, and individuals. For instance, attorneys general of 25 states and territories jointly submitted a comment stating that the proposed regulations would permit Federal, State, and local law enforcement to access information about suspicious real estate transfers more efficiently because that information would all be available from a single source, and that the information would aid them in identifying suspicious residential real estate transfers on a nationwide basis that might otherwise remain undetected. These attorneys general and one industry association applauded FinCEN's choice to use a transaction-specific reporting mechanism rather than imposing an AML/CFT program requirement on persons involved in real estate closings and settlements. One non-profit commenter expressed support for FinCEN's recognition of the wide-ranging impacts that money laundering through real estate can have on tenants, homebuyers, and the affordability and stability of regional housing markets and believed the rule will improve housing access. Two industry associations expressed strong support for the proposed rule, with one commenter expressing the view that it reflected a pragmatic approach. One industry association and an individual commenter stated that a permanent and nationwide rule would provide greater predictability and certainty to industry than Residential Real Estate GTOs.

Other commenters expressed opposition to the proposed rule. Some expressed concern about FinCEN's legal authority to impose a reporting requirement in the manner set forth in the proposed rule. Other commenters argued that the proposed reporting requirement would be ineffective, burdensome, or would require reporting

of information that is reported to the government through other avenues. The majority of private sector commenters—primarily small businesses, individuals employed in the real estate industry, and certain trade associations—asserted that the proposed reporting requirements are too broad and complex and would be burdensome to implement. They further assert that this would result in increased costs for businesses and, ultimately, consumers, potentially delaying closings and causing consumers to decline to seek their services. Many of these commenters expressed concerns that the proposed regulations, if finalized without significant change, would impose numerous and costly reporting and recordkeeping requirements on small businesses. Some commenters suggested the proposed rule would put large businesses at a competitive disadvantage while others suggested the same about small businesses. These commenters also suggested that the proposed regulation would create privacy and security concerns with respect to personally identifiable information. A number of these commenters suggested that FinCEN either not issue a final regulation or adopt a narrower approach, requiring reporting of less information on fewer transfers. Several commenters suggested that attorneys that fulfill any of the functional roles set out in the reporting cascade should not be required to report, primarily due to concerns about attorney-client privilege and confidentiality requirements.

Furthermore, many commenters suggested a range of modifications to the proposed regulations to: enhance clarity; reduce the potential burdens to industry; include or exclude certain professions from reporting requirements; refine the impact to certain segments of the industry; and enhance the usefulness of the resulting reports. Several commenters also asked hypothetical questions that sought clarification on the application of the proposed rule to certain situations.

FinCEN carefully reviewed and considered each comment submitted, and a more detailed discussion of comments appears in Section III. FinCEN believes that the regulatory requirements set out in this final rule reflect the appropriate balance between ensuring that reports filed under the rule have a high degree of usefulness to law enforcement and minimizing the compliance burden incurred by businesses, including small businesses. As detailed in Section III, FinCEN has made several amendments to the proposed rule that are responsive to

commenters and that may also reduce certain anticipated burdens.

III. Discussion of Final Rule

A. Overview

FinCEN is issuing a final rule that generally adopts the framework set out in the proposed rule but makes certain modifications and clarifications that are responsive to comments. The final rule imposes a reporting requirement on “reporting persons” that are involved in certain kinds of transfers of residential real property. In response to comments, the rule adopts a reasonable reliance standard, allowing reporting persons to, in general, reasonably rely on information obtained from other persons. FinCEN has also made other amendments in the final rule that are intended to clarify and simplify the reporting requirements, such as clarifying the definition of residential real property. Additionally, the rule excludes several additional transfers from needing to be reported, including one designed to exempt certain transfers commonly executed for estate and tax planning purposes. FinCEN also limited the requirement to retain certain records. We discuss these and other specific issues, comments, modifications, and clarifications in this section, beginning with issues that cut across the entire rule and continuing with a section-by-section analysis of changes and clarifications to the regulatory text, including sections for which FinCEN received no feedback from commenters.

FinCEN notes that it will consider issuing frequently asked questions (FAQs) and other guidance, as appropriate, to further clarify the application of the rule to specific circumstances. FinCEN also intends to continue to engage with stakeholders, for example through public outreach events, to assist with ensuring that the rule's requirements are understood by affected members of the public, including small businesses.

B. Comments Addressing the Rule Broadly

FinCEN received several comments that cut across various provisions of the rule or were otherwise broadly applicable. The subjects addressed by these comments include: FinCEN's authority to issue the rule; alternatives to the reporting and recordkeeping requirements; attorneys as reporting persons; the extent to which a reporting person can rely on information received from other persons; penalties for noncompliance; and the collection of unique identifying numbers. FinCEN

has carefully considered these comments and addresses them below.

1. Authority

Proposed Rule. The NPRM set out the legal authority that authorized the agency's issuance of the rule. Specifically, the NPRM cited the BSA provisions set forth at 31 U.S.C. 5312(a)(2), which defines a financial institution to include "persons involved in real estate closings and settlements," and at 31 U.S.C. 5318(g), authorizing FinCEN to impose a requirement on financial institutions to report suspicious activity reports, and to establish streamlined processes regarding the filing of such reports.

Comments Received. Several commenters questioned the legal authority underpinning the rule and the BSA reporting regime more generally, with one commenter stating that "the Constitutionality of this regime is not an entirely closed question." These commenters argued that the rule potentially infringes on certain constitutional rights and that it is inconsistent with certain statutes and Executive Orders (EOs), citing primarily to Gramm-Leach-Bliley Act (GLBA) and E.O. 12866. With regard to GLBA, one commenter stated that "[t]he [r]ule proposed by FinCEN directly clashes with the legal guideposts and requirements of the GLBA."

Final Rule. FinCEN is issuing this final rule pursuant to its BSA authority to require "financial institutions" to report "suspicious transactions" under 31 U.S.C. 5318(g)(1); the rule falls squarely within the scope of this authority. As discussed in the NPRM and in Section II.A.1 of this final rule, "persons involved in real estate closings and settlements" are a type of "financial institution" under the BSA.¹⁹ As such, FinCEN has clear statutory authority to require "persons involved in real estate closings and settlements" to file reports on suspicious activity,²⁰ and courts have long affirmed the constitutionality of, such reporting requirements.²¹ Furthermore, a more recent amendment to the BSA at 31 U.S.C. 5318(g)(5)(D) provides FinCEN with additional flexibility to tailor the form of the SAR reporting requirement. Consistent with that authority, FinCEN is instituting a streamlined SAR filing requirement to require specified "persons involved in real estate closings and settlements" to

report certain real estate transactions that FinCEN views as high-risk for illicit finance.

With regard to the comment concerning the relationship between the final rule and GLBA, FinCEN notes that information in reports filed under the BSA, which will include any information in a Real Estate Report, is exempt from the requirements of GLBA.²² Finally, FinCEN notes that significant comments relating to applicable E.O. are addressed in the regulatory impact analysis in this final rule.

2. Suggested Alternatives to Proposed Rule

Proposed Rule. The NPRM proposed that certain persons involved in the closing and settlement of real estate report and keep records about certain non-financed transfers of residential real estate to certain legal entities and trusts.

Comments Received. Commenters suggested several alternatives to the proposed reporting and recordkeeping requirement. One commenter suggested expanding the Internal Revenue Service (IRS) Form 1099-S to include the collection of buyer-side information in addition to the seller-side information already collected. Some commenters suggested that, rather than requiring reporting by real estate professionals, FinCEN should require reporting from county clerk offices when they accept a deed for a reportable transfer or directly from transferees before a reportable transfer. Finally, other commenters urged FinCEN to fund alternative databases or purchase access to electronic records at each county clerk's office and monitor filed deeds.

Final Rule. The final rule retains the fundamental framework of the proposed rule. FinCEN believes that the alternatives suggested by commenters are either technically or legally unworkable and would likely not result in the reporting of information that is equally useful to law enforcement. First, the IRS Form 1099-S is filed annually, making it significantly less useful to law enforcement and, as discussed in the NPRM,²³ is not readily available for FinCEN or broader law enforcement uses due to confidentiality protections around federal taxpayer information. Second, FinCEN believes that county clerks' offices and individuals do not typically play a role in the kinds of transfers that would require reporting. Therefore, these individuals would not

likely be in a position to interact with both the transferor(s) and the transferee(s), and thus, may not have ready access to reportable information. Regarding the suggested alternative of collecting reportable information directly from transferees instead of through reporting persons, FinCEN believes that buyers and sellers would be less willing to share personal information with each other than with a real estate professional fulfilling a function described in this rule's reporting cascade. Third, simply monitoring deeds at the county clerk level would likely not produce the information, including beneficial ownership and payment information, that FinCEN believes is important to law enforcement in combating illicit actors' abuse of opaque legal structures in the residential real estate market. Further, funding alternative databases would similarly not result in this information being made available to law enforcement, as private service providers would be unable to gather the same variety of highly relevant information, and any information they did provide would not be consolidated in a database with other BSA reports. The consolidation of Real Estate Reports with other BSA reports—including, but not limited to, traditional SARs, CTRs, Reports of Cash Payments Over \$10,000 Received in a Trade or Business (Forms 8300), and Reports of Foreign Bank and Financial Accounts—is important for law enforcement purposes, as doing so will allow law enforcement to efficiently cross-reference information across the various BSA reports.

3. Attorneys as Potential Reporting Persons

Proposed Rule. Under the proposed rule, attorneys could potentially be subject to a reporting requirement if they perform any of the real estate closing and settlement functions described in the reporting cascade. The proposed rule did not differentiate between attorneys and non-attorneys when they perform the same functions involving transfers of residential real property.

Comments Received. A number of commenters addressed the inclusion of attorneys in the reporting cascade. In general, legal associations opposed the inclusion of attorneys performing certain closing and settlement functions in the cascade as reporting persons, while others, in particular transparency organizations, supported the inclusion of attorneys as reporting persons. Commenters opposed to inclusion of attorneys generally argued that an attorney could not act as a reporting

¹⁹ 31 U.S.C. 5312(a)(2)(U); see FinCEN, NPRM, "Anti-Money Laundering Regulations for Residential Real Estate Transfers," 89 FR 12424, 12427 (Feb. 16, 2024).

²⁰ See 31 U.S.C. 5318(g).

²¹ See *California Bankers Ass'n v. Shultz*, 416 U.S. 21 (1974); *U.S. v. Miller*, 425 U.S. 435 (1976).

²² 15 U.S.C. 6802(e)(5).

²³ See FinCEN NPRM, "Anti-Money Laundering Regulations for Residential Real Estate Transfers," 89 FR 12424, 12447–12448 (Feb. 16, 2024).

person without either breaching the attorney's professional ethical obligations to maintain client confidentiality or violating attorney-client privilege. Some commentors also suggested that FinCEN lacks legal authority to regulate attorneys under the BSA.

Final Rule. FinCEN declines to amend the reporting cascade to exclude attorneys from the requirement to report.

First, FinCEN does not believe that attorneys would violate their professional ethical obligations by filing a Real Estate Report. Although commenters noted that the ABA Model Rules on Professional Conduct generally require attorneys to keep client information confidential regardless of whether it is subject to the attorney-client privilege, Rule 1.6(b)(6) of the Model Rules states that “[a] lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary . . . to comply with other law or a court order.” The annotations to the Model Rules further elaborate that “[t]he required-by-law exception may be triggered by statutes, administrative agency regulations, or court rules.” FinCEN believes that the Real Estate Report falls squarely within the required-by-law exception described in Rule 1.6(b)(6).

Second, FinCEN believes that the information required in the Real Estate Report (e.g., client identity and fee information) is of a type not generally protected by the attorney-client privilege, and accordingly FinCEN is not persuaded that attorneys should be categorically excluded from the reporting cascade on that basis.²⁴ Moreover, even if there were an unusual circumstance in which some information required to be reported in the Real Estate Report might arguably be subject to the attorney-client privilege, an attorney in such an unusual situation need not assume a reporting obligation, as that attorney might allow other parties in the reporting cascade to file the Real Estate Report through a designation agreement or, in certain circumstances, might decline to perform the function that triggers the obligation. It is therefore unlikely that any attorney would necessarily be required to disclose privileged information. Nonetheless, FinCEN expects to issue guidance that will address the rare circumstance in which an attorney is concerned about the disclosure of potentially privileged information,

which will provide further information on the mechanism for asserting the attorney-client privilege and appropriately filing the relevant Real Estate Report.

Similarly, FinCEN is not persuaded by commentors who argued that FinCEN lacks the authority to regulate attorneys under the BSA, claiming that the BSA does not clearly evince an intention to regulate attorneys. The BSA expressly authorizes regulation of “persons involved in real estate closings and settlements,” and it is common for such persons to be attorneys. Congress thus made clear its intention to authorize regulation of functions commonly performed by attorneys, and it would be anomalous to regulate those functions only when performed by non-attorneys. FinCEN also notes that attorneys are not exempt from submitting reporting forms to FinCEN in other contexts in which they are not explicitly identified by statute, such as with FinCEN Form 8300, which must be submitted by any “[a]ny person . . . engaged in a trade or business.” All courts of appeals that have considered the question have concluded that Form 8300 reporting requirements do not per se violate the attorney-client privilege and that attorneys must file such a form absent certain narrow exceptions.²⁵

4. Reasonable Reliance Standard

Proposed Rule. Proposed 31 CFR 1031.320(e)(3) provided that the reporting person may collect beneficial ownership information for the transferee entity or transferee trust directly from a transferee or a representative of the transferee, so long as the person certifies in writing that the information is correct to the best of their knowledge. However, the proposed rule did not state whether and to what extent a reporting person could rely on information provided by other persons in the context of other required information (i.e., other than beneficial ownership information) required under the rule or to make any determination necessary to comply with the rule.

Comments Received. Several commenters asked for clarification of this provision, suggesting that the burden to industry would be significant if reporting persons were required to verify the accuracy of each piece of reportable information provided by a transferee or another party, with one

commenter questioning whether true verification is possible. Several commenters also expressed liability concerns, including that reporting persons could be penalized if a third party provides information that turns out to be incorrect.

To resolve these concerns, commenters suggested that reporting persons should be able to rely on information provided by the transferee or that the transferee should certify the accuracy of required information beyond beneficial ownership information. One industry group took the reliance standard a step further, suggesting that the reporting person be able to rely on the representations of the transferee for purposes of determining whether the transferee is an exempt entity or trust. One transparency group suggested that the final rule require that reporting persons perform a “clear error” or “best efforts” check to ensure they are not reporting obviously fraudulent information.

Some commenters suggested that, where a transferee is unwilling to provide complete or accurate information, reporting persons should be allowed to file incomplete forms, with some arguing that “good faith attempts” to file reports that are ultimately incomplete should not be penalized. Another argued that the reporting person should be able to simply file the information provided without any responsibility for its accuracy or completeness. However, one transparency group argued that reporting persons should not be allowed to file incomplete forms and that the final rule should clarify that, where a reporting person cannot gather complete information from a transferee, then the reporting person should decline to take part in the real estate transfer. Other commenters similarly questioned whether a reporting person can continue to facilitate a transfer if the transferee refuses to cooperate in providing reportable information. Additionally, one industry group requested that the final rule impose a clear duty on other persons described in the reporting cascade to share information reportable under the proposed rule.

Final Rule. In 31 CFR 1031.320(j), the final rule adopts a reasonable reliance standard that allows reporting persons to reasonably rely on information provided by other persons. As a result, the reporting person generally may rely on information provided by any other person for purposes of reporting information or to make a determination necessary to comply with the final rule, but only if the reporting person does not have knowledge of facts that would

²⁴ See, e.g., *In re Grand Jury Subpoenas*, 906 F.2d 1485, 1488 (10th Cir. 1990) (collecting cases).

²⁵ See; *U.S. v. Sindel*, 53 F.3d 874, 876 (8th Cir. 1995); *U.S. v. Blackman*, 72 F.3d 1418, 1424–25 (9th Cir. 1995); *U.S. v. Ritchie*, 15 F.3d 592, 602 (6th Cir. 1994); *U.S. v. Leventhal*, 961 F.2d 936, 940 (11th Cir. 1992); *U.S. v. Goldberger & Dubin, P.C.*, 935 F.2d 501, 505 (2d Cir. 1991); *In re Grand Jury Subpoenas*, 906 F.2d 1485, 1492 (10th Cir. 1990).

reasonably call into question the reliability of the information. This reasonable reliance standard is consistent with that used by certain financial institutions subject to customer due diligence requirements.²⁶

This reasonable reliance standard is slightly more limited when a reporting person is reporting beneficial ownership information of transferee entities or transferee trusts. As expressed in the proposed rule, and as adopted in the final rule, when a reporting person is collecting the beneficial ownership information of transferee entities and transferee trusts. In those situations, the reasonable reliance standard applies only to information provided by the transferee or the transferee's representative and only if the person providing the information certifies the accuracy of the information in writing to the best of their knowledge.

FinCEN recognizes the necessity of permitting reliance on information supplied to the reporting person, considering the time and effort it would take for the reporting person to verify each piece of information independently. FinCEN believes that the reasonable reliance standard is significantly less burdensome than an alternative full verification standard, while still ensuring that obviously false or fraudulent information would not be reported.

As an example, FinCEN expects that the reporting person would be able to reasonably rely on the accuracy of a person's address provided orally or in writing, without reviewing government-issued documentation such as a drivers' license, provided the reporting person does not have reason to question the information provided (e.g., if the information provided were to contain a numerically unlikely ZIP code or the person providing it makes comments bringing into question the reliability of the address or has provided other unreliable information).

As an additional example, in the context of ascertaining whether particular transfers are "non-financed transfers,"²⁷ a reporting person may rely on the information provided by the relevant lender extending credit secured by the underlying residential real property as to whether the lender has an obligation to maintain an AML program and an obligation to report suspicious transactions under 31 CFR Chapter X, provided the reporting person does not have reason to question the lender's information (e.g., if the lender were to

represent that he (as a natural person) is subject to AML obligations).

In response to the comment requesting that FinCEN permit the filing of an incomplete report, FinCEN declines to add language to the regulation to provide for that option. FinCEN believes that allowing for the submission of incomplete reports could make it easier for transferees to avoid reporting requirements while simultaneously also making it difficult for FinCEN to ensure compliance with the rule. It could also greatly reduce the reports' utility to law enforcement. FinCEN believes the adoption of the reasonable reliance standard addresses many of the concerns expressed about access to reportable information.

Finally, FinCEN does not adopt the suggestion that a legal duty be imposed on other persons in the reporting cascade to share reportable information with the reporting person. FinCEN believes that the reasonable reliance standard will make the sharing of information easier and therefore will decrease potential friction among the persons described in the reporting cascade. Further, FinCEN believes that reporting persons are unlikely to perform the function described in the reporting cascade until they have either obtained the required information or are reasonably certain that they will be able to obtain it soon after the date of closing. If information cannot be obtained from a person in the reporting cascade, the reporting person would reach out directly to a relevant party to the transfer (e.g., the transferee) to gather the missing information.

FinCEN notes that there is no exception from reporting under the final rule should a transferee fail to cooperate in providing information about a reportable transfer. The final rule does not authorize the filing of incomplete reports, and a reporting person who fails to report the required information about a reportable transfer could be subject to penalties. However, FinCEN will consider issuing additional public guidance to assist the financial institutions subject to these regulations in complying with their reporting obligations.

5. Penalties

Proposed Rule. The proposed rule did not include a specific reference to potential penalties for noncompliance, as those penalties are already set forth in the provisions of the BSA that discuss criminal and civil penalties for violating a BSA requirement.

Comments Received. Several commenters sought clarification about penalties for noncompliance, with one

commenter noting that the proposed rule did not explicitly address potential penalties for failing to file a report or for filing an inaccurate report.

Final Rule. Consistent with the NPRM, FinCEN believes that it is unnecessary to list potential penalties in the regulatory text because the applicable penalties are already set forth by statute. Negligent violations of the final rule could result in a civil penalty of, as of the publication of the final rule, not more than \$1,394 for each violation, and an additional civil money penalty of up to \$108,489 for a pattern of negligent activity.²⁸ Willful violations of the final rule could result in a term of imprisonment of not more than five years or a criminal fine of not more than \$250,000, or both.²⁹ Such violations also could result in a civil penalty of, as of the publication of the final rule, not more than the greater of the amount involved in the transaction (not to exceed \$278,937) or \$69,733.³⁰ This penalty structure generally applies to any violation of a BSA requirement.³¹ FinCEN intends to conduct outreach to potential reporting persons on the need to comply with the final rule's requirements.

6. Unique Identifying Numbers

Proposed Rule. Proposed 31 CFR 1031.320(e) set forth requirements for the reporting person to report a unique identifying number of the transferee entity or transferee trust, the beneficial owners of the transferee entity or trust, the individuals signing documents on behalf of the transferee entity or trust, and the trustee of a transferee trust. FinCEN proposed that the specific form of unique identifying number required would be a taxpayer identification number (TIN) issued by the IRS, such as a Social Security Number or Employer Identification Number. However, the proposed rule provided that, when no IRS TIN had been issued, the proposed rule required the reporting of a foreign tax identification number or other form of foreign identification number, such as a passport number or entity registration number issued by a foreign government.

Comments Received. One commenter argued against the collection of TINs as a unique identifying number, citing to the reporting requirements of the Beneficial Ownership Information

²⁸ 31 U.S.C. 5321.

²⁹ 31 U.S.C. 5322.

³⁰ 31 U.S.C. 5321; 31 CFR 1010.821.

³¹ See FinCEN, "Financial Crimes Enforcement Network (FinCEN) Statement on Enforcement of the Bank Secrecy Act" (Aug. 18, 2020), available at https://www.fincen.gov/sites/default/files/shared/FinCENEnforcementStatement_FINAL508.pdf.

²⁶ 31 CFR 1010.230(b)(2).

²⁷ Discussed below in Section III.C.2.b.

Reporting Rule (BOI Reporting Rule).³² In the NPRM for the BOI Reporting Rule,³³ which was issued pursuant to the Corporate Transparency Act (CTA),³⁴ FinCEN initially proposed the voluntary reporting of TINs by a reporting company of its beneficial owners but eliminated this optional reporting in the final rule. The final BOI Reporting Rule does, however, require that reporting companies report their own TINs.³⁵

Final Rule. In the final rule, FinCEN adopts the proposed requirement to collect the unique identifying numbers of entities and individuals, including their TINs, but clarifies that, for legal entities, a unique identifying number is required only if such number has been issued to that entity. The proposed rule contained a similar provision for transferee trusts, which the final rule adopts. In the trust context, no unique identifying number would need to be reported if a unique identifying number has not been issued to the trust. For instance, there may be a situation in which a transferee trust has not been issued an IRS TIN, nor has it been issued any of the foreign identifying numbers set out in the rule. With the clarifying edit to the unique identifying numbers required for legal entities, the rule makes clearer that a unique identifying number would similarly not be required to be reported in such a situation. FinCEN notes that the final rule does not extend this language to the TINs of individuals, as FinCEN expects that individuals will have been issued one of the unique identifying numbers required by the regulations.

While FinCEN continues to acknowledge that IRS TINs are subject to heightened privacy concerns and that

the collection of such information could entail cybersecurity and operational risks, several factors weighed heavily in its decision to retain this requirement. TINs are commonly required on other BSA reports, including, for example, Forms 8300, which FinCEN notes are commonly filed by the real estate industry. Furthermore, TINs are frequently necessary to identify the same actors, particularly those with similar names or those using aliases, across different BSA reports and investigations. FinCEN believes that nearly all reporting persons—primarily businesses performing functions typically conducted by settlement companies, including many that already file reports containing TINs with the government—will have preexisting data security systems and programs to protect information such as TINs, particularly since such information is often collected in the course of financed transfers of residential real estate.

C. Section-by-Section Analysis

1. 31 CFR 1031.320(a) General

FinCEN did not receive any comments to the general paragraph of the proposed rule found in proposed 31 CFR 1031.320(a), which provided a framework for the rule. That paragraph has been adopted in the final rule without substantial change. The technical changes that have been made include the renumbering of paragraph references, the addition of a reference to a new paragraph discussing the concept of reasonable reliance, and certain clarifying changes, such as the addition of language clarifying that reports required under this section and any other information that would reveal that a reportable transfer has been reported are not confidential.

2. 31 CFR 1031.320(b) Reportable Transfer

The proposed rule defined a reportable transfer as a non-financed transfer of any ownership interest in residential real property to a transferee entity or transferee trust, with certain exceptions. These proposed exceptions, found in 31 CFR 1031.320(b), reflected FinCEN's intent to capture only higher risk transfers. The proposed rule provided that transfers would be reportable irrespective of the value of the property or the dollar value of the transaction; there was no proposed dollar threshold for a reportable transfer. The proposed rule also provided that transfers would only be reportable if a reporting person is involved in the transfer and if the transferee is either a legal entity or trust.

Transfers between individuals would not be reportable.

a. Residential Real Property

Proposed Rule. Proposed 31 CFR 1031.320(b) defined “residential real property” to include real property located in the United States containing a structure designed principally for occupancy by one to four families; vacant or unimproved land located in the United States zoned, or for which a permit has been issued, for the construction of a structure designed principally for occupancy by one to four families; and shares in a cooperative housing corporation.

Comments Received. Several commenters argued that reporting persons would not have ready access to the zoning or permitting information necessary to determine whether vacant or unimproved land is reportable under the rule. Commenters noted that reporting persons do not routinely determine zoning information and that accurate zoning information may take several weeks to obtain. Examination of permits, they argued further, would take similar time and effort. Some commenters also noted that purchases of unimproved or vacant land are often for lower dollar amounts and therefore present a lower risk for money laundering. Two other commenters suggested that the determination of whether a property is “residential real property” as defined under the rule should turn on whether the real estate sales contract or purchase and sale agreement describes the property as being residential.

Furthermore, two commenters suggested that the proposed definition of residential real property lacked clarity, with one focusing on the treatment of mixed-use property and the other requesting that the definition provide clearer criteria, taking into account the treatment of residential real estate under tax law, zoning processes, and mortgage agreements, with examples provided. Another commenter suggested that FinCEN provide a non-exhaustive list of possible transfers intended to be subject to reporting requirements and that the list specifically include any transfer of ownership and any creation of an equitable interest, whether in whole or in part, directly or indirectly, in the property. One commenter requested clarity as to whether a transfer of residential real property as defined under the rule includes assignment contracts.

Final Rule. The definition of residential real property in paragraph 31 CFR 1031.320(b), as adopted in the final

³² 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 requires certain legal entities to file reports with FinCEN that identify their beneficial owners. See FinCEN, “Beneficial Ownership Information Reporting Requirements,” 87 FR 59498 (Sept. 30, 2022). Access by authorized recipients to beneficial ownership information collected under the CTA are governed by other FinCEN regulations. See FinCEN, “Beneficial Ownership Information Access and Safeguards,” 88 FR 88732 (Dec. 22, 2023).

³³ See FinCEN, NPRM, “Beneficial Ownership Information Reporting Requirements,” 86 FR 69920 (Dec. 8, 2021).

³⁴ The CTA is Title LXIV of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283 (Jan. 1, 2021) (the NDAA). Division F of the NDAA is the Anti-Money Laundering Act of 2020, which includes the CTA. Section 6403 of the CTA, among other things, amends the Bank Secrecy Act (BSA) by adding a new section 5336, Beneficial Ownership Information Reporting Requirements, to subchapter II of chapter 53 of title 31, United States Code.

³⁵ See 31 CFR 1010.380(b)(1)(i).

rule, contains several modifications and clarifications of the language in the proposed rule. This definition continues to include vacant or unimproved land, as FinCEN does not agree with the comment suggesting that transfers of such property inherently pose a lower risk for money laundering.

The revised definition addresses the difficulty raised by commenters in determining whether vacant or unimproved land is zoned or permitted for residential use by focusing on whether the transferee intends to build on the property a structure designed principally for occupancy by one to four families. Furthermore, the new provision added to the rule concerning reasonable reliance permits the reporting person to reasonably rely on information provided by the transferee to determine such intent. To address comments that requested clarity on whether mixed-use property qualifies as residential real property, the definition of residential real property also clarifies that separate residential units within a building, such as individually owned condominium units, as well as entire buildings designed for occupancy by one to four families, are included.

Taking into account the above changes, the definition of residential real property is now: (1) real property located in the United States containing a structure designed principally for occupancy by one to four families; (2) land located in the United States on which the transferee intends to build a structure designed principally for occupancy by one to four families; (3) a unit designed principally for occupancy by one to four families within a structure on land located in the United States; or (4) any shares in a cooperative housing corporation for which the underlying property is located in the United States. Given the ability for a reporting person to reasonably rely on information obtained from other persons, FinCEN declines to adopt the other suggestions made by some of the commenters to facilitate the determination of whether the property is residential in nature. FinCEN further notes that the definition is meant to include property such as single-family houses, townhouses, condominiums, and cooperatives, including condominiums and cooperatives in large buildings containing many such units, as well as entire apartment buildings designed for one to four families. Furthermore, transfers of such properties may be reportable even if the property is mixed use, such as a single-family residence that is located above a commercial enterprise.

FinCEN also notes that the rule is not designed to require reporting of the transfer of contractual obligations other than those demonstrated by a deed or, in the case of a cooperative housing corporation, through stock, shares, membership, certificate, or other contractual agreement evidencing ownership. Therefore, the transfer of an interest in an assignment contract would not be reportable. Assignment contracts typically involve a wholesaler contracting with homeowners to buy residential real property and then assigning their rights in the contract to a person interested in owning the property as an investment. The eventual purchase of the property by the assignee investor may be reportable under this rule because a transfer of an ownership interest demonstrated by a deed has occurred, but the initial signing of the contract between the assignor and the original homeowner would not be reportable.

b. Non-Financed Transfers

Proposed Rule. Proposed 31 CFR 1031.320(b)(1) defined the term “reportable transfer” to only include transfers that do not involve an extension of credit to all transferees that is both secured by the transferred residential real property and extended by a financial institution that has both an obligation to maintain an AML program and an obligation to report suspicious transactions under 31 CFR Chapter X. As explained in the NPRM, FinCEN considers such transfers to be “non-financed” for purposes of this rule.

Comments Received. One industry organization noted that the proposal would result in reporting when an individual transfers property subject to qualified financing to a trust, because the qualified financing is in the name of the transferor rather than the transferee trust. Another commenter similarly requested clarity as to whether the reporting of non-financed transfers applies only with respect to qualified financing held by the transferee, as opposed to qualified financing held by the transferor.

Two transparency organizations requested that FinCEN clarify whether partially financed transfers are reportable. These commenters cited as examples a situation in which some or all of the source of funds originate from entities or beneficial owners that have not undergone AML checks from a covered financial institution or where qualified credit is extended to some, but not all, beneficial owners of transferees. Finally, one commenter requested clarity as to how the reporting person

would determine if the transfer is non-financed.

Final Rule. The substance of the definition of a “non-financed transfer” is adopted as proposed, but FinCEN has elected to move the definitions paragraph of the rule to 31 CFR 1031.320(n)(5). FinCEN declines to adopt the commenter’s suggestion to include a specific carveout in the definition to account for transfers where the qualified financing is extended to the grantor or settlor of a trust, rather than to the trust itself—an issue raised in the comments. This situation is addressed, however, in the new exception for certain transfers to trusts for no consideration, discussed in depth in Section III.C.2.c.

In regards to requests for clarity about whether partially financed transfers meet the definition of a non-financed transfer, FinCEN notes that partially financed transfers involving one transferee (for example, in which the transferee entity or transferee trust puts down a 50 percent down payment but obtains a mortgage to finance the rest of the transfer) would not be reported. However, the definition of a non-financed transfer would result in reporting of transfers in which there are multiple transferee entities or transferee trusts receiving the property and financing is secured by some, but not all, of the transferees.

As to the comment questioning how reporting persons would determine whether a transfer is non-financed, it has been FinCEN’s experience with the Residential Real Estate GTOs that persons required to report have readily determined whether a given financial institution extending financing has such AML program obligations by asking the financial institution directly. The reporting person can reasonably rely on the representations made by the financial institution.

c. Excepted Transfers

Proposed Rule. Proposed 31 CFR 1031.320(b)(2) provided exceptions for transfers that are: the result of a grant, transfer, or revocation of an easement; the result of the death of an owner; incident to divorce or dissolution of marriage; to a bankruptcy estate; to individuals; or for which there is no reporting person.

Comments Received. Support for the proposed exceptions came from an industry group that applauded the decision to except transfers made to individuals. Other commenters did not oppose the proposed regulation and instead suggested modifications or clarifications that built on the proposed

exceptions. Numerous commenters also proposed additional exceptions.

However, FinCEN received several comments suggesting that FinCEN clarify or otherwise amend certain other exceptions, including those proposed for death, divorce, and bankruptcy. Two legal associations proposed that FinCEN clarify the exception for transfers that are the result of a death to ensure that the exception applies even if a transfer is not executed pursuant to a will or where the decedent is not technically the owner of the property at death because the property is owned by a revocable trust set up by the decedent. One legal association suggested that FinCEN expand the proposed exceptions for divorce, death, or bankruptcy to include transfers to certain specific types of trusts. One State bar association suggested that the rule build on the exceptions for death and divorce by excepting any transfers made in connection with a court-supervised legal settlement. A transparency organization recommended limiting the exceptions to transfers made to family members or heirs pursuant to divorce, probate proceedings, or a will, expressing concern that transfers resulting from death or divorce would remain at risk for money laundering.

Multiple commenters requested additional exceptions. Several commenters focused on exceptions for transfers to trusts used for estate or tax planning purposes. A State bar association requested the exclusion of transfers for estate planning purposes that involve no monetary consideration. One commenter suggested excepting gifts between family members, whether being transferred into a trust or legal entity, and in particular suggested excluding transfers to revocable trusts in which the trustee confirms by affidavit that the trustee or the settlor is the same person as the primary beneficiary. Similarly, another State bar association suggested that FinCEN except any intrafamily transfers and transfers into certain trusts created for estate or tax planning purposes, including revocable trusts, irrevocable trusts, irrevocable life insurance trusts, grantor trusts, purpose trusts, qualified personal residence trusts, pooled trusts, special needs and supplemental trusts, creditor protection trusts, various charitable trusts, certain State business trusts, and certain State business associations.

Some commenters suggested exceptions built around the relationship between the transferor and the transferee in the context of estate planning. Two such commenters requested that the final rule exclude any

transfer where the transferor is the settlor of a transferee trust, because beneficial ownership of the property would remain the same. A State bar association suggested excluding transfers that include the creation of a self-settled revocable or irrevocable trust, wherein the grantor(s)/settlor(s) of the trust have created it for the benefit of the grantor(s) or members of their family, arguing that such trusts for the purposes of estate planning are low risk for money laundering, and therefore of little interest to FinCEN, and that their exclusion would reduce the number of reports required from reporting persons. In a similar vein, a State land title association suggested the exclusion of living trusts with the same name as the property owner, citing the example of an individual purchasing property in a non-financed transfer and then subsequently transferring the property to a trust for estate planning purposes. A trust and estate-focused legal association similarly suggested the exclusion of transfers to trusts in which at least one of the beneficial owners is the same as the transferor or in which the transfer is for the benefit of the family of the transferor. One legal association asked that exceptions be made for transfers in which there is no change in beneficial ownership of the property and two other commenters similarly requested that FinCEN exclude any transfers where the transferor is the managing or sole member of a transferee entity or is the settlor of a transferee trust. The legal association also suggested an exception when the ownership interest in the property remains within a family.

Two commenters suggested the exclusion of sequential transfers involving a trust. One described these sequential transfers as occurring when an individual purchases residential real property in their own name with a mortgage and subsequently transfers the property to a trust, or when an individual seeks to refinance property held in a trust by transferring title of the property from the trust to the individual, refinancing in the name of the individual, and then transferring title of the property back to the trust. Another commenter stated that properties held in revocable trusts for estate planning are often only removed from the trust for refinancing or taking on additional debt and therefore have oversight from those processing mortgage loans. Such transfers, argued the commenters, are low risk and would result in unnecessary and redundant reporting.

Some commenters suggested excluding transfers where the transferee

or transferor is a qualified intermediary for the purposes of 26 U.S.C. 1031 (1031 Exchange), also known as a like-kind exchange. A national trade association for 1031 Exchange practitioners suggested adding an exception that would mirror the exception found in the BOI Reporting Rule for reporting of individuals acting as nominee, intermediary, custodian, or agent on behalf of another individual.³⁶ Three title insurance associations and two State bar associations urged FinCEN to include an exception for corrective conveyances, one commenter requested exclusion of transfers involving additional insured endorsements, another commenter suggested that FinCEN explicitly exclude foreclosures and evictions, and several commenters suggested that the final rule focus only on foreign transferees.

FinCEN also received a range of comments related to whether a dollar threshold should be included, below which reporting would not be required. In general, commenters representing transparency organizations supported the lack of a threshold in the proposed rule, with one commenter arguing that any threshold would provide a clear path for evasion. Other commenters—mostly real estate associations, businesses, or professionals—advocated for the inclusion of a threshold to reduce the number of reports that would need to be filed and avoid the reporting of transfers perceived as low risk for money laundering. One commenter suggested implementing a \$1 threshold, others suggested \$1,000, one suggested \$10,000, and another suggested adopting the same threshold as FinCEN's Residential Real Estate GTOs.

Final Rule. In the final rule, FinCEN is adopting the exceptions proposed in 31 CFR 1031.320(b)(2) and adding several additional exceptions.

First, in response to comments asking FinCEN to clarify the scope of the exception for transfers resulting from death, FinCEN has adopted language, set forth at 31 CFR 1031.320(b)(2)(ii), to clarify that the exception includes all transfers resulting from death, whether pursuant to the terms of a will or a trust, by operation of law, or by contractual provision. In the context of transfers resulting from death, transfers resulting by operation of law include, without limitation, transfers resulting from intestate succession, surviving joint owners, and transfer-on-death deeds, and transfers resulting from contractual provisions include, without limitation, transfers resulting from beneficiary designations. With respect to inclusion

³⁶ 31 CFR 1010.380(d)(3)(ii).

of transfers required under the terms of a trust, by operation of law, or by contractual agreements, FinCEN believes such transfers are akin to transfers required by a will, as they result from the death of the grantor or settlor or individual who currently owns the residential real property. As described in the NPRM, the exception was meant to include transfers governed by preexisting legal documents, such as wills, or that generally involve the court system. FinCEN believes that the adopted language will clarify the intended scope of the exception, which is meant to exclude only low-risk transfers of residential real property involving transfers that are required by legal or judicial processes at the time of the decedent's death.

Second, the rule adds an exception for any transfer supervised by a court in the United States at 31 CFR 1031.320(b)(2)(v). This exception builds on a commenter's suggestion to expand the list of exceptions to include transfers made in connection with a court-supervised legal settlement, but is focused on transfers required by a court instead of simply supervised by a court, which narrows the opportunity for such transfers to be abused by illicit actors. FinCEN believes that, like probate and divorce, transfers required as a result of judicial determination in the United States are generally publicly documented and subject to oversight and therefore are subject to a lower risk for money laundering.

Third, while FinCEN did not receive comments on the scope of the exception for transfers incident to divorce or the dissolution of marriage, FinCEN believes it is appropriate to clarify in the regulation that the exception also applies to the dissolution of civil unions and has done so at 31 CFR 1031.320(b)(2)(iii). Civil unions are similar to marriages with regard to property issues in form and function and are terminated in a similar manner—generally with the involvement of courts.

Fourth, in response to the comments requesting exceptions for estate planning techniques and for sequential transfers to trusts, an exception is added at 31 CFR 1031.320(b)(2)(vi) for transfers of residential real property to a trust where the transfer meets the following criteria: (1) the transfer is for no consideration; (2) the transferor of the property is an individual (either alone or with the individual's spouse); and (3) the settlor or grantor of the trust is that same transferor individual, that individual's spouse, or both of them. FinCEN expects that this addition will except many common transfers made for

estate planning purposes described by commenters, including transfers described in the exception where the grantor or settlor's family are beneficiaries of the trust, as well as sequential transfers to trusts, such as where the qualified financing is extended to the grantor or settlor rather than to the trust itself and the grantor or settlor then is transferring the secured residential real property for no consideration to the trust.

FinCEN intended to scope this exception in a manner that was responsive to comments but that would not create an overly broad exception that would be open to significant abuse. To be sure, illicit actors are known to use estate planning techniques to obscure the ownership of residential real estate, and all non-financed transfers of residential real estate not subject to this rule are subject to less oversight from financial institutions than financed transfers and are therefore inherently more vulnerable to money laundering. However, transfers in which an individual who currently owns residential real property is funding their own trust with that property are believed to be a lower risk for money laundering because the true owner of the property is not obscured when the property is transferred. Given this limitation on the exception and how common it is for an individual to place residential real property into a trust, whether revocable or irrevocable, for estate planning purposes, FinCEN believes it is appropriate to except such transfers at this time. Additionally, the expanded exception benefits from relying on information readily available to the reporting person, as the reporting person will know the identity of the transferor and can ascertain, such as through a trust certificate, whether the transferor is the grantor or settlor of the trust.

FinCEN does not agree with some commenters that the exception should be broader by excepting transfers where beneficial ownership does not change or where the transfer is an intrafamily one. An exception for such transfers would be difficult for the reporting person to administer, as it would require a review of the dispositive terms of the trust instrument, and it would be difficult for the reporting person to assess the reliability of information provided to them about beneficial ownership or family relationships. FinCEN also does not agree that all such transfers are automatically low risk for money laundering, especially when consideration is involved. Overall, the adopted exception offers a low-risk, bright line that should be easy to

understand and implement, lowering the burden on both industry and the parties to the transfer, when compared with the proposed rule.

FinCEN also does not believe that this same logic can be extended to justify excepting transfers of property by an individual to a legal entity owned or controlled by such individual, as some commenters suggested. In the exception described above concerning no consideration transfers to trusts, the exception applies when the transferor of residential real property is also the grantor or settlor of the trust—the identity of the grantor or settlor of the trust is a fact tied to the creation of the trust, is revealed on the face of the trust instrument, and generally cannot be changed. Although the trustee and beneficiaries of the trust may change over time, the identification of the settlor or grantor of the trust generally allows FinCEN to identify the source of the property being contributed to the trust, a factor that is critical to the identification and prevention of money laundering. That same identification and persistent connection with the transferor does not exist in the context of transfers of residential real property to a legal entity, where it is common for various owners of interests in the entity to each contribute assets to it.

Finally, the final rule adopts an exception, at 31 CFR 1031.320(b)(2)(vii), for transfers made to qualified intermediaries for purposes of effecting 1031 Exchanges. Such exchanges are commonly conducted to defer the realization of gain or loss, and, thus, the payment of any related taxes, for Federal income tax purposes.³⁷ This exception is limited to transfers made to the qualified intermediary; transfers from a qualified intermediary to the person conducting the exchange (the exchanger) remain potentially reportable if the exchanger is a legal entity or trust. When taking ownership of property in a 1031 Exchange, the qualified intermediary is acting on behalf of the exchanger for the limited purpose of effecting the exchange. In addition, the qualified intermediary may hold the property for only a limited

³⁷ In a 1031 Exchange, real property held for productive use in a trade or business or held for investment is exchanged for other business or investment property that is the same type or kind; as a result, the person conducting the exchange is not required to realize taxable gain or loss as part of the exchange. To avoid the exchange being disqualified, a qualified intermediary may be used to ensure that the exchanger avoids taking premature control of the proceeds from the sale of the relinquished property or, in a reverse 1031 Exchange in which the replacement property is identified and purchased before the original property is relinquished, ownership of the replacement property.

period of time before it jeopardizes the transaction's ability to qualify as a valid 1031 Exchange. Accordingly, FinCEN has determined that requiring the reporting of transfers made to a qualified intermediary would likely result in information that is of lower value to law enforcement. FinCEN considered whether to resolve commenter concerns around qualified intermediaries by relying, as one commenter suggested, on the rule's definition of transferee entity, which adopts by reference the exception found in 31 CFR 1010.380(d)(3)(ii) for the reporting of individuals who are acting as a nominee, intermediary, custodian, or agent. Without noting whether such exception for nominees, intermediaries, custodians, or agents would appropriately apply in the context of qualified intermediaries, FinCEN believes that allowing the broader exception for 1031 Exchanges in this rule more clearly resolves commenter concerns.

The final rule does not adopt the suggestions to exclude corrective conveyances and additional insured endorsements, as FinCEN believes such exceptions are not necessary. Corrective conveyances are used to correct title flaws, such as misspelled names, and are not used to create a new ownership interest in a property. As such, corrective conveyances do not involve a transfer of residential real property and are therefore not reportable. Similarly, additional insured endorsements are used to extend coverage of title insurance to an additional party identified by the policyholder and do not meet the rule's definition of a reportable transfer of residential real property.

The final rule also does not adopt the suggestion to exclude foreclosure sales, although FinCEN notes that foreclosure court proceedings wherein a lender obtains a judgment to foreclose on property would be excluded under the exception for transfers required by a court in the United States. Outside of such court-supervised foreclosure proceedings, FinCEN does not agree that potential reporting persons involved in sales of foreclosed property should be treated differently from other transfers, as such sales, where the property is sold to a third party, do not necessarily present a lower risk for money laundering.

FinCEN also declines to implement the suggestion that the final rule collect information only on foreign transferee entities and trusts. Law enforcement investigations and FinCEN's experience with the Residential Real Estate GTOs have repeatedly confirmed that non-

financed transfers of residential real estate to both foreign and domestic legal entities and trusts are high risk for money laundering.

Furthermore, the rule does not adopt suggestions to include a dollar threshold for reporting. Low value non-financed transfers to legal entities and trusts, including gratuitous ones for no consideration, can present illicit finance risks and are therefore of interest to law enforcement. Although the Residential Real Estate GTOs have had an evolving dollar threshold over the course of the program, ranging from over \$1 million to the current threshold of \$300,000, FinCEN's experience with administering the program and discussions with law enforcement shows that money laundering through real estate occurs at all price points. FinCEN believes that incorporation of a dollar threshold could move illicit activity into the lower priced market, which would be counter to the aims of the rule.³⁸ Rather than specifically exclude all such transfers from being reported, the final rule includes additional exceptions, discussed here and in Section III.C.2.c, that FinCEN believes will focus the reporting requirement on higher-risk low-value transfers.

d. Transferee Entities

Proposed Rule. Proposed 31 CFR 1031.320(j)(10) provided that a "transferee entity" is any person other than a transferee trust or an individual and set out the exceptions from this definition for certain entities, including certain highly regulated entities and government authorities. The definition of transferee entity was meant to include, for example, a corporation, partnership, estate, association, or limited liability company. Among the exceptions FinCEN proposed was an exception for any legal entity whose ownership interests are controlled or wholly owned, directly or indirectly, by an exempt entity.

Comments Received. Some commenters supported the proposed rule's inclusion of transferee entities as defined in the proposed rule, with one transparency organization highlighting that pooled investment vehicles (PIVs) and non-profits are largely exempt from beneficial ownership information reporting requirements under the CTA, which increases their risks for money laundering.

Final Rule. In 31 CFR 1031.320(n)(10), the final rule adopts the proposed

definition of "transferee entity" with technical edits to two specific exceptions from that definition. First, in 31 CFR 1031.320(n)(10)(O), FinCEN removed the unnecessary inclusion of the acronym "(SEC)" because the Securities and Exchange Commission is referred to only once in 31 CFR 1031.320. Second, FinCEN removed the term "ownership interests" from 31 CFR 1031.320(n)(10)(P), so that the regulation now excludes from the definition of a transferee entity a "legal entity controlled or wholly owned, directly or indirectly, by [an excepted legal entity]." FinCEN made this amendment to avoid potential confusion because the term "ownership interests" is specifically defined in the regulations at 31 CFR 1031.320(n)(6) and employed only in relation to residential real property.

e. Transferee Trusts

Proposed Rule. Proposed 31 CFR 1031.320(j)(11) defined "transferee trust" as any legal arrangement created when a person (generally known as a grantor or settlor) places assets under the control of a trustee for the benefit of one or more persons (each generally known as a beneficiary) or for a specified purpose, as well as any legal arrangement similar in structure or function to the above, whether formed under the laws of the United States or a foreign jurisdiction. The NPRM proposed several exceptions for certain types of trusts that FinCEN views as highly regulated—for instance, trusts that are securities reporting issuers and trusts that have a trustee that is a securities reporting issuer. Accordingly, such trusts were not covered by the proposed rule. Similarly, the proposed rule excluded statutory trusts from the definition of a transferee trust but, instead, proposed to capture statutory trusts within the definition of a transferee entity.

Comments Received. Several commenters supported the general inclusion of trusts within the scope of the rule and provided examples of money laundering through real estate transfers to trusts. One transparency organization highlighted that trusts are not required to directly report beneficial ownership information under the CTA and are therefore a higher risk for money laundering. However, other commenters were not supportive of the inclusion of trusts, arguing that trusts are: complicated arrangements for which the paperwork would not be easily understood by reporting persons; used for probate avoidance; and inherently low risk.

³⁸ The current Residential Real Estate GTO threshold is \$300,000 for all covered jurisdictions, except for in the City and County of Baltimore, where the threshold is \$50,000.

Several commenters suggested excluding living trusts. Three commenters suggested excluding transfers to irrevocable living trusts, arguing either that such trusts are low risk for money laundering or that such reporting is redundant with information received by the IRS. Some focused on revocable trusts, particularly those used for estate planning, arguing that they are subject to a lower risk of money laundering and that requiring reporting on such trusts would be burdensome given how commonly they are used.

Other commenters suggested the exclusion of specialized types of trusts. Two suggested excluding transfers to a qualified personal residence trust and another suggested excluding transfers to an intentionally defective grantor trust, charitable remainder trust, any qualified terminal interest property trust benefitting the contributing homeowner, testamentary trust, third-party common law discretionary trust, a discretionary support trust, or a trust for the support of an incapacitated beneficiary, including supplemental or special needs trusts, arguing that these transfers generally do not involve property purchased in cash within the last year and are low risk for money laundering.

Final Rule. In the final rule, FinCEN retains the requirement to report transfers to transferee trusts and, in 31 CFR 1031.320(n)(11), adopts the definition of “transferee trust” as proposed with one technical edit to make certain language consistent across similar provisions in the rule. As discussed in Section II.A.2, FinCEN continues to believe that non-financed residential real estate transfers to certain trusts present a high risk for money laundering. FinCEN also believes that the potential difficulties described by commenters, such as the need to review complex trust documents to determine whether a trust is reportable, will be minimized by the addition of new exceptions and by the reasonable reliance standard adopted in the final rule which is discussed in Section III.B.4.

FinCEN considered comments suggesting that it adopt additional exceptions from the definition of a transferee trust for specific types of trusts. In particular, comments suggested exceptions for all living trusts, all revocable trusts, or all irrevocable trusts, as well as more specialized types of trusts such as qualified personal residence trusts or defective grantor trusts. FinCEN believes that the suggested exceptions would be overly broad and, as such, would exclude from reporting certain transfers that pose a high risk for illicit

finance. However, depending on the particular facts and circumstances of a trust arrangement, some of the aforementioned trusts may be covered under the more tailored exception for “no consideration transfers” to trusts described in Section III.C.2.c. We also note that certain trusts, such as testamentary trusts, are not captured by the reporting requirement, as such trusts are created by wills and therefore fall within the exception for transfers occurring as a result of death.

3. 31 CFR 1031.320(c) Determination of Reporting Person

Proposed 31 CFR 1031.320(c) set forth a cascading reporting hierarchy to determine which person providing real estate closing and settlement services in the United States must file a report for a given reportable transfer. As an alternative, the persons described in the reporting cascade could enter into an agreement to designate a reporting person.

a. Reporting Cascade

Proposed Rule. Through the proposed reporting cascade, a real estate professional would be a reporting person required to file a report and keep records for a given transfer if the person performs a function described in the reporting cascade and no other person performs a function described higher in the reporting cascade. For example, if no person is involved in the transfer as described in the first tier of potential reporting persons, the reporting obligation would fall to the person involved in the transfer as described in the second tier of potential reporting persons, if any, and so on. The reporting cascade includes only persons engaged as a business in the provision of real estate closing and settlement services within the United States. The proposed reporting cascade was as follows: (1) the person listed as the closing or settlement agent on the closing or settlement statement for the transfer; (2) the person that prepares the closing or settlement statement for the transfer; (3) the person that files with the recordation office the deed or other instrument that transfers ownership of the residential real property; (4) the person that underwrites an owner's title insurance policy for the transferee with respect to the transferred residential real property, such as a title insurance company; (5) the person that disburses in any form, including from an escrow account, trust account, or lawyers' trust account, the greatest amount of funds in connection with the residential real property transfer; (6) the person that provides an evaluation of the status of

the title; and finally (7) the person that prepares the deed or, if no deed is involved, any other legal instrument that transfers ownership of the residential real property.

Comments Received. Some commenters, including real estate agent associations and transparency organizations, supported the use of a reporting cascade, believing it to be functional and useful in preventing arbitrage, while one commenter specifically opposed it, arguing that the cascading approach would be burdensome. One industry group asked that FinCEN exclude banks and other financial institutions subject to AML/CFT program requirements as reporting persons, arguing that such financial institutions are already subject to a higher standard of BSA compliance. Some commenters variously opposed the inclusion of settlement and closing agents, title agents, or escrow agents as reporting persons because they felt it threatened their status as neutral third parties with limited responsibilities when facilitating a transfer of residential real property. Other commenters expressed concern that certain professionals in the reporting cascade would be ill-equipped to report.

Associations representing real estate agents agreed with the absence in the cascade of functions typically associated with real estate agents, while two escrow industry commenters proposed including real estate agents as reporting persons. One commenter suggested adding appraisers as reporting persons, arguing that required inclusion of appraisers would help to identify potential market distortion by illicit actors and that appraisers are otherwise well-equipped to be reporting persons. That commenter also suggested that FinCEN require appraisals be included in every non-financed transfer. One industry association urged FinCEN to exempt small businesses from reporting altogether. One commenter asked for a clear exclusion for homeowners associations, arguing that their burden would be high. A transparency organization and an industry commenter suggested that FinCEN explicitly prohibit transferees, transferors, and their owners from being reporting persons.

Some commenters argued that certain functions described in the proposed reporting cascade should be moved further up in the cascade to ensure parties with what they viewed as the best access to information are the first-line reporters. One commenter suggested that 31 CFR 1031.320(c)(1)(iii) be modified to include the person who prepares a stock certificate or a

proprietary lease to better cover potential reporting persons closing transfers of cooperative units, and another requested clarity as to who files deeds with the recording office.

Two commenters noted that the reporting cascade may result in more than one reporting person in split settlements, in which the buyer and seller use separate settlement agents. One of those commenters also suggested that certain scenarios could result in the identification of multiple reporting persons, such as when transfers are closed by independent escrow companies but also involve title insurance or when an attorney performs the document preparation, document signing, and disbursement of funds in a transfer that also involves title insurance. Finally, one commenter noted that, in some locations, it is possible for title insurance to be issued several months after closing.

Final Rule. FinCEN adopts the reporting cascade largely as proposed. The reporting cascade is designed to efficiently capture both sale and non-sale transfers, and FinCEN notes that the real estate industry already uses a similar reporting cascade to comply with requirements associated with IRS Form 1099-S.³⁹

As set forth at 31 CFR 101.320(c)(3), FinCEN adopts the suggestion made by one commenter to exclude from the definition of a reporting person financial institutions with an obligation to maintain an AML program. Where a financial institution would have otherwise been a reporting person, the reporting obligation falls to the next available person described in the reporting cascade. The intent of this rulemaking is to address money laundering vulnerabilities in the U.S. real estate market, recognizing that most persons involved in real estate closings and settlements are not subject to AML program requirements. FinCEN considered imposing comprehensive AML obligations on such unregulated persons, but ultimately decided, as reflected in the final rule, to impose the narrower obligation of a streamlined SAR filing requirement. Financial institutions that already have an obligation to maintain AML programs, however, generally already have a SAR filing requirement that is more expansive than the streamlined reporting requirement adopted by this final rule. Therefore, FinCEN believes that it would not be appropriate at this time to add a streamlined reporting

requirement to the existing obligations of a financial institution with an obligation to maintain an AML program. FinCEN also believes that the removal of financial institutions from the cascade of reporting persons will generally result in real estate reports simply being filed by others in the reporting cascade, not in those reports remaining unfiled.

FinCEN is not persuaded by commenters suggesting that other types of professionals should be added to or excluded from the cascade. Excluding categories of real estate professionals that execute functions listed in the reporting cascade based on their professional title or business size would result in a significant reporting loophole that illicit actors would exploit. FinCEN believes it is also unnecessary for the effectiveness of the reporting cascade to include additional functions, such as the provision of appraisal services or services that real estate agents typically provide to buyers and sellers. FinCEN believes that the reporting cascade, as adopted, will effectively capture high risk non-financed transfers of residential real estate and any additional functions would unnecessarily increase the complexity of the rule. Furthermore, real estate agents and appraisers usually perform their primary functions in advance of the actual closing or settlement and therefore generally do not perform a central role in the actual closing or settlement process, unlike real estate professionals performing the functions described in the reporting cascade. FinCEN believes that focusing the reporting cascade on functions more central to the actual closing or settlement is necessary to ensure the reporting person has adequate access to reportable information. Regarding homeowners associations, FinCEN believes that is not necessary to explicitly exempt them the definition of a reporting person because they do not traditionally play the roles enumerated in the reporting cascade.

FinCEN is also not persuaded by commenters' suggestion that the reporting obligation would affect or decrease the neutral position of settlement agents and escrow agents. These real estate professionals are "neutral" in that they have similar obligations to both the transferee and transferor and are therefore seen as an independent party acting only to facilitate the transfer, as opposed to a party acting primarily to advance the interests of just one of the parties to the transfer. The reporting obligation does not upset the balance between service to the transferee and transferor. It merely requires the professional to report

additional information about the transfer.

FinCEN confirms that transferees, transferors, and their beneficial owners cannot be reporting persons unless they are engaged within the United States as a business in the provision of a real estate closing and settlement service listed in the reporting cascade, but declines to explicitly prohibit transferees, transferors, and their beneficial owners from being reporting persons when they do play these roles, as it would create an exploitable loophole in the reporting cascade, if such persons were the only real estate professionals involved in the transfer.

The final rule adopts clarifications proposed by commenters with respect to cooperatives. For cooperatives, the stock certificate is akin to a deed prepared for other types of residential real estate, and therefore FinCEN believes that it is appropriate to include these types of functions in the reporting cascade. However, FinCEN declines to modify the language for the person that files with the recordation office the deed or other instrument that transfers ownership of the residential real property, as requested by one commenter. FinCEN believes the proposed language clearly captures a person engaged as a business in the provision of real estate closing and settlement services that files the deed with the recordation officer. It would not include the individual clerk at the office who accepts the deed or other instrument.

In regard to concerns raised by a commenter about split settlements, the definition of "closing or settlement statement" found in 31 CFR 1031.320(n)(2) is modified in the final rule to make clarify that the closing or settlement statement is limited to the statement prepared for the transferee only. FinCEN does not agree that the other situations described by the commenter would result in multiple reporting persons being identified, given the inherent nature of the reporting cascade wherein the reporting responsibility flows down the cascade depending on the presence of a person performing each listed function.

The final rule does not adopt any changes to account specifically for title insurance purchased a significant period of time after a transfer of property. In those situations, FinCEN expects that the underwriting of title insurance would not be part of the closing or settlement process, and therefore another person in the reporting cascade would file the report. However, in the rare situation where there is no other person in the reporting

³⁹ See 29 CFR 1.6045-4 (Information reporting on real estate transactions with dates of closing on or after January 1, 1991).

cascade participating in the closing or settlement of a reportable transfer, the underwriter of title insurance may ultimately be required to file the report when the insurance is eventually purchased.

b. Designation Agreements

Proposed Rule. Proposed 31 CFR 1031.320(c)(3) set forth the option for persons in the reporting cascade to enter into an agreement deciding which person should be the reporting person with respect to the reportable transfer. For example, if a real estate professional involved in the transfer provides certain settlement services in the settlement process, as described in the first tier of the reporting cascade, that person may enter into a written designation agreement with a title insurance company underwriting the transfer as described in the second tier of the reporting cascade, through which the two parties agree that the title insurance company would be the designated reporting person with respect to that transfer. The person who would otherwise be the reporting person must be a party to the agreement; however, it is not necessary that all persons involved in the transfer who are described in the reporting cascade be parties to the agreement. The agreement must be in writing and contain specified information, with a separate agreement required for each reportable transfer.

Comments Received. Two business associations requested that the rule allow for what they described as “blanket” designation agreements. Such agreements would allow two or more persons described in the reporting cascade to designate a potential reporting person for a set period of time or a set number of transfers. For example, a commenter put forward the example of a title insurance company and a settlement company entering into an agreement wherein, for any transfer in which they are both involved, the title insurance company would be the designated reporting person. One of these commenters stated that blanket designation agreements would bring a type of certainty that is required for them to benefit from the costs savings provided by designation agreements. A third business association argued that designation agreements will not be effective, resulting in settlement companies being the primary reporting person. A fourth business association asked whether a third-party vendor could be a designated reporting person.

Final Rule. In the final rule, FinCEN adopts the allowance for designation agreements in 31 CFR 1031.320(c)(4) as proposed. Although FinCEN sees the

potential benefits of blanket designation agreements, such agreements would undermine FinCEN’s ability to enforce the rule, particularly when a Real Estate Report is not filed as required, and accordingly the final rule does not permit a blanket designation agreement in lieu of a separate designation agreement for each relevant transfer. A single transfer could be subject to multiple, potentially overlapping, blanket designation agreements between different parties. In such a situation, it would be difficult for FinCEN to determine which person had ultimate responsibility for filing the report, and even the persons described in the reporting cascade may not know who had filing responsibility. By comparison, a separate designation agreement for each transfer, describing the specific details of the transfer, makes that determination straightforward. The designation agreement is designed to provide an optional alternative to the reporting cascade that can be effectively and efficiently implemented by reporting persons if they choose. However, nothing in the final rule prohibits persons in the reporting cascade from having an understanding, in writing or otherwise, as to how they generally intend to comply with the rule, provided that they continue to effect designation agreements for applicable transfers.

The final rule also does not allow for third-party vendors who are not described in the reporting cascade to be designated as a reporting person, as such vendors are not financial institutions that can be regulated by FinCEN; a reporting person could outsource the preparation of the form to a third-party vendor, but the ultimate responsibility for the completion and filing of the report would lie with the reporting person.

4. 31 CFR 1031.320(d) Information Concerning the Reporting Person

Proposed Rule. Proposed 31 CFR 1031.320(d) set forth a requirement that reporting persons must report their full legal name and the category into which they fall in the reporting cascade, as well as the street address of their principal place of business in the United States.

Comments Received. FinCEN did not receive any comments on reportable information concerning the reporting person.

Final Rule. FinCEN is adopting 31 CFR 1031.320(d) as proposed.

5. 31 CFR 1031.320(e) Information Concerning the Transferee

a. General Information Concerning Transferee Entities

Proposed Rule. Proposed 31 CFR 1031.320(e)(1) set forth a requirement for the reporting of the name, address, and unique identifying number of a transferee entity, as well as similar identifying information for the beneficial owners of the transferee entity and the persons signing documents on behalf of the transferee entity.

Comments Received. One organization requested that the final rule collect legal entity identifiers (LEIs) for transferee entities. As described by the commenter, the LEI was developed by the International Organization for Standards and is “the only global standard for legal entity identification.”

Final Rule. In the final rule, FinCEN adopts 31 CFR 1031.320(e)(1) as proposed. It does not incorporate the suggestion to require reporting of LEIs. For purpose of this reporting requirement, FinCEN believes that a TIN is preferable, as it is broadly utilized by law enforcement and may be easily connected to other BSA documents.

b. General Information Concerning Transferee Trusts

Proposed Rule. Proposed 31 CFR 1031.320(e)(2) set forth a requirement to report certain information about transferee trusts, including the name of the trust, the date the trust instrument was executed, the address of the place of administration, a unique identifying number, and whether the trust is revocable. Proposed 31 CFR 1031.320(e)(2) also required the reporting of information about each trustee that is an entity, including full legal name, trade name, current address, the name and address of the trust officer, and a unique identifying number. Furthermore, proposed 31 CFR 1031.320(e)(2) required the reporting of identifying information about the trust’s beneficial owners and the individuals signing documents on behalf of the trust.

Comments Received. Two industry organizations and two other commenters associated with the title insurance industry argued that information reportable for trusts should align with that on trust certificates issued under State law. As described by one industry organization, “[u]nder the Uniform Trust Act promulgated by the Uniform Law Commission and enacted in 35 states, a trustee is authorized to issue a certification of trust containing much of the information sought under

this proposed rule.” Another commenter requested that the beneficial ownership information collected under this rule align more closely with that collected under the BOI Reporting Rule. One other commenter, a non-profit organization, requested that the final rule collect legal entity identifiers (LEIs) for transferee trusts, for the reason discussed in Section III.C.5.a above with respect to legal entities.

Final Rule. In the final rule, FinCEN adopts 31 CFR 1031.320(e)(2) largely as proposed. FinCEN is persuaded by the recommendation to align information collected about trust transferees more closely with what is available on trust certificates. While they vary by state, trust certificates generally contain much of a trust’s basic identifying information, such as the name of the trust, the date the trust was entered into, the name and address of the trustee, and whether the trust is revocable. The final rule eliminates the proposal to report information identifying the trust officer or the address that is the trust’s place of administration, as this information is not commonly found on trust certificates and FinCEN believes other information collected will be sufficient to support law enforcement investigations. However, reporting persons are still required to report some information that may not be available on trust certificates, such as the identifying information for the trustee, as this is basic information necessary to conclusively identify the trust and to effectively conduct investigations into illicit activity. FinCEN believes this information will be readily collected by reporting persons; for example, because trustees generally manage the assets of the trust, the trustee will likely be directly involved in the transfer of residential real property to the trust.

The final rule does not adopt the suggestion to completely align the collection of beneficial ownership information with that collected under the BOI Reporting Rule. While the two rules do align in the collection of the beneficial owner’s name, date of birth, and address, they differ in two key respects: first, regarding the unique identifying number, the real estate rule relies largely on TINs instead of passport numbers; and second, the real estate rule collects citizenship information, while the BOI Reporting Rule does not. As discussed in Section III.B.6, TINs are a key piece of identifying information for purposes of the database that would hold Real Estate Reports, and other BSA reports typically require TINs for this reason. Furthermore, FinCEN believes that the collection of citizenship information is

necessary in this context to better analyze the volume of illicit funds entering the United States via entities or trusts beneficially owned by non-U.S. persons and is a key element for ensuring that the implementation of this rule will enhance and protect U.S. national security. FinCEN notes that such citizenship information, along with TINs, are reported on traditional SARs. Finally, the rule does not incorporate the suggestion to require reporting of LEIs, for the reasons discussed in Section III.C.2.d with respect to information collected for transferee entities.

c. Beneficial Ownership Information of Transferee Entities and Trusts

Proposed Rule. Proposed 31 CFR 1031.320(e) set forth requirements to report certain beneficial ownership information with respect to transferee entities and transferee trusts. Proposed 31 CFR 1031.320(j)(1)(i) largely defined beneficial owners of transferee entities through a reference to regulations in the BOI Reporting Rule, specifically 31 CFR 1010.380(d). Similarly, proposed 31 CFR 1031.320(j)(1)(ii) established a definition for the beneficial owners of transferee trusts by leveraging concepts from the BOI Reporting Rule. For both transferee entities and transferee trusts, the proposed regulation set forth that the determination of beneficial ownership would be as of the date of closing. The proposed rule did not require reporting persons to determine whether an individual was a beneficial owner, allowing them instead to use a certification form described in 31 CFR 1031.320(e)(3) to collect beneficial ownership information directly from a transferee trust or a person representing a trust in the reportable transfer, as discussed further in Section III.B.4.

Comments Received. Three commenters expressed support for the collection of beneficial ownership information on the Real Estate Report, with one transparency organization specifically supporting the proposed rule’s adoption of definitions from the BOI Reporting Rule. This commenter noted that the proposal would minimize confusion, promote consistency, and maximize the ability to cross-reference data. Multiple commenters, however, argued that the collection of beneficial ownership information under the proposed rule is unnecessary due to the collection of similar information under the BOI Reporting Rule. Some of these commenters also argued that, if beneficial ownership information is collected, it should be limited to the reporting of a FinCEN Identifier, which is an identification number that

reporting entities and their beneficial owners may use to report beneficial ownership information under the BOI Reporting Rule. An industry group representing trust and estate lawyers argued that the definition of a beneficial owner of a transferee trust should be limited to trustees, rather than also including grantors/settlors and beneficiaries.

One commenter requested that the final rule retain the exception from beneficial ownership information reporting found in 31 CFR 1010.380(d)(3)(ii) for nominees, intermediaries, custodians, and agents, while two other commenters requested that the rule should except reporting where a beneficial owner is a minor.

Final Rule. The final rule retains the requirement to provide beneficial ownership information in the report, as proposed, with one technical edit to correct a cross reference. FinCEN agrees that the Real Estate Report will contain some information that is also reported under the BOI Reporting Rule. However, because these two distinct reports would be filed on 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. As FinCEN explained in the NPRM, the beneficial ownership information report (BOIR) and the report required by this rule serve different purposes.

The information reported on a BOIR informs FinCEN about the reporting companies that have been formed or registered in the United States, while Real Estate Reports 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. Real Estate Reports, 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. BOIRs are kept secure but are intended to be made available not only to government agencies but to financial institutions for certain compliance purposes. Real Estate Reports will be subject to all of the protections and limitations on access and use that already apply to SARs.

The need for two different types of report, of course, does not mean that FinCEN is not concerned about eliminating unnecessary duplication of effort. FinCEN appreciates the suggestion that reporting persons be allowed to submit FinCEN Identifiers in lieu of collecting and submitting beneficial ownership information for legal entities that are considered reporting companies under the BOI Reporting Rule. However, FinCEN has identified a number of legal and operational limitations that would prevent FinCEN from accepting FinCEN identifiers outside of the CTA context.⁴⁰ For instance, information provided to FinCEN under the CTA, including the information provided in order to obtain FinCEN identifiers, is housed in an information technology system kept separate from other Bank Secrecy Act reports. The CTA imposes strict limits on access to that system, and those statutory limits are reflected in implementing regulations and the relevant Privacy Act System of Records Notice.⁴¹ There is no reason to think that persons entitled to access to CTA information will routinely also be entitled to access to SARs and other BSA reports, or vice versa. Thus, at this time, allowing FinCEN identifiers to be reported in lieu of the underlying information would limit the usefulness of Real Estate Reports to law enforcement. As discussed in Section II.A.2 in the context of cross-referencing data from Residential Real Estate GTOs with SARs, the ability to link non-financed transfers of residential real property with other BSA reports is of significant value to law enforcement. Thus, FinCEN has not adopted this suggestion in the final rule.

With regard to the comments suggesting a more limited definition of a beneficial owner, FinCEN does not adopt the suggestion that beneficial owners of trusts be limited to trustees. The final rule instead adopts the approach in the proposed rule, which set forth several positions in a transferee trust that FinCEN considers to be occupied by the beneficial owners of the trust, including: the trustee; an individual other than a trustee with the authority to dispose of transferee trust assets; a beneficiary that is the sole permissible recipient of income and principal from the transferee trust or that has the right to demand a distribution of, or withdraw,

substantially all of the assets from the transferee trust; a grantor or settlor who has the right to revoke the transferee trust or otherwise withdraw the assets of the transferee trust; and the beneficial owner(s) of any legal entity that holds at least one of these positions. The persons holding these positions have clear ownership or control over trust assets and therefore should be reported as beneficial owners of the trust.

For legal entities, 31 CFR 1031.320(n)(1)(i) continues to reference 31 CFR 1010.380(d) and therefore the final rule incorporates exceptions from the definition of beneficial owner of a reporting company; these exceptions include nominees, intermediaries, custodians, and agents, as well as minor children (when certain other information is reported). For transferee trusts, the definition of beneficial owner in 31 CFR 1031.320(n)(1)(ii) does not contain exceptions mirroring those found in the definition of a beneficial owner of a transferee entity. FinCEN considered adding an exception for minor children as suggested by commenters but believes at this time that such an exception is not appropriate for trusts. Trusts, unlike legal entities, are largely designed to transfer assets to family members such as minor children, and therefore the reporting of minor children will accurately reflect the nature of the trust and, in aggregate, will allow FinCEN to more accurately determine the risks related to trusts. FinCEN notes, however, that the definition of beneficial owner is unlikely to result in significant reporting of minor children, as minor children would fall into only one category of beneficial owner—as the beneficiary of the transferee trust, and only when the minor child is the beneficiary who is the sole permissible recipient of income and principal from the transferee trust.

6. 31 CFR 1031.320(f) Information Concerning the Transferor

Proposed Rule. Proposed 31 CFR 1031.320(f) required the reporting person to report information relevant to identifying the transferor, such as the transferor's name, address, and identifying number. If the transferor is a trust, similar information would be reported identifying the trustee.

Comments Received. One think tank supported the collection of information on transferors, while three industry organizations opposed it, arguing that such information is unnecessary for law enforcement and is redundant with other information available to law enforcement through public land

records, BOI reports filed under the CTA, or IRS Form 1099-S.

Final Rule. In the final rule, FinCEN adopts 31 CFR 1031.320(f) as proposed. Information identifying the transferor is necessary to identify certain money laundering typologies, such as where the transferor and transferee are related parties mispricing the real estate in order to transfer value from one to the other. There is therefore a significant benefit to having the transferor's information on the same report as the transferee's information. The transferor's information is basic information about the transferor and does not include information that may be more difficult to gather, such as beneficial ownership information. There is a significant value in adding transferor information in the same report as transferee information and in the same database as information from other BSA reports. FinCEN has addressed the suggestion that similar information is available through reports filed under the BOI Reporting Rule or IRS Form 1099-S in Section III.B.2.

7. 31 CFR 1031.320(g) Information Concerning the Residential Real Property

Proposed Rule. Proposed 1031.320(g) required the reporting person to report the street address, if any, and the legal description (such as the section, lot, and block) of each residential real property that is the subject of a reportable transfer.

Comments Received. FinCEN did not receive any comments related to the reporting of information concerning residential real property.

Final Rule. FinCEN adopts 31 CFR 1031.320(g) with technical edits that are meant to lay out the requirements more clearly, and a modification to the text to require the reporting of the date of closing. The NPRM requested comments as to whether the proposed information reported regarding the description of the transferred residential real property was sufficient. Although FinCEN received no comments regarding the reporting of date of closing, FinCEN has subsequently determined that such information is necessary for it to confirm whether reporting persons are complying with the final rule. The term "date of closing" was defined in the NPRM (and is adopted in the final rule) to mean the date on which the transferee entity or transferee trust receives an ownership interest in the residential real property. As proposed in the NPRM and adopted in the final rule, reporting persons have to ascertain the date of closing to make key determinations, such as the filing

⁴⁰ See FinCEN, "Beneficial Ownership Information Access and Safeguards," 88 FR 88732 (Dec. 22, 2023).

⁴¹ FinCEN, "Notice of a New System of Records," 88 FR 62889 (Sept. 13, 2023).

deadline, discussed in Section III.C.11, and whether an individual is a beneficial owner, discussed in Section III.C.5.c. Because the date of closing is information that a reporting person must obtain to comply with the final rule and, relatedly, is information FinCEN also must receive to enforce compliance with the rule, the reporting of such information is a logical outgrowth of the NPRM. The parties to the transfer will know the date of closing and be able to report that date easily on the Real Estate Report.

8. 31 CFR 1031.320(h) Information Concerning Payments

Proposed Rule. Proposed 31 CFR 1031.320(h) set forth a requirement that reporting persons report detailed information about the consideration, if any, paid in relation to any reportable transfer. This would include total consideration paid for the property, the amount of each separate payment made by or on behalf of the transferee entity or transferee trust, the method of such payment, the name of and account number with the financial institution originating the payment, and the name of the payor.

Comments Received. Several commenters argued that reporting persons would not have ready access to the proposed information to be collected about payments. An industry group, for example, stated that state-level “good funds” laws limit settlement agents to accepting fully and irrevocably settled and collected funds, meaning typically wire payments and cashier’s checks, which would not contain information such as the originator’s full account number. A business clarified that, for wire payments, a settlement company would only see: the date on which the wire transfer was received; the amount of the wire transfer; the name on the originator’s account; the routing number for the sending bank; the name of the bank used by the beneficiary; the beneficiary’s account number; the beneficiary’s name and address; and wire information providing a reference number relevant to escrow. Some commenters also argued that the originating financial institution would be unlikely to provide the relevant information; that the person holding the originating account, such as an escrow company or attorney, would similarly be unlikely to provide the relevant information; or that transferees may refuse to provide information, believing the reporting of account numbers would put them at risk.

To remedy these issues, commenters argued that payment information should instead be limited to either the total

consideration or to the information readily available on wire instructions or a check. Some commenters suggested eliminating the reporting of payment information entirely, questioning the usefulness of reporting such information given that covered financial institutions are likely involved in the processing of such payments and that the reporting person may be separately required to report payment information on a Form 8300, and also raising concerns about the potential increased risk of fraud if detailed account information is required to be reported.

Final Rule. In the final rule, FinCEN adopts 31 CFR 1031.320(h) largely as proposed, with edits to clarify the reporting of the total consideration paid. FinCEN acknowledges that the information required may be beyond what is normally available to the reporting person, but nevertheless believes that the information can be readily collected from the transferee. FinCEN expects that the adoption of the reasonable reliance standard in this rule will help relieve concerns articulated by commenters about the burden of verifying payment information or their ability to collect such information. FinCEN also notes that filers of IRS Form 1099-S must report the account numbers of transferors and therefore believes these to be accessible to reporting persons, many of whom file such forms.

FinCEN appreciates commenters’ concerns about potential risks associated with collecting and retaining detailed payment information in relation to reportable transfers and believes that the removal of the requirement to retain Real Estate Reports, in which personal information would be aggregated, for five years, as discussed in Section III.C.12, will help mitigate this risk.

9. 31 CFR 1031.320(i) Information Concerning Hard Money, Private, and Similar Loans

Proposed Rule. Proposed 31 CFR 1031.320(i) set forth the requirement that reporting persons report whether the transfer involved an extension of credit from any institution or individual that does not have AML program obligations.

Comments Received. FinCEN did not receive any comments about the reporting of information concerning hard money, private, and similar loans.

Final Rule. In the final rule, FinCEN adopts 31 CFR 1031.320(i) as proposed. FinCEN believes this information will be valuable to understanding the risks presented by private lenders. FinCEN notes that, as discussed in Section

III.C.2.b covering the definition of a non-financed transfer, reporting persons may rely on information from the lender as to whether the lender has an AML program obligation.

10. 31 CFR 1031.320(j) Reasonable Reliance

The final rule adopts a reasonable reliance standard, set forth in 31 CFR 1031.320(j), that generally allows reporting persons, whether when reporting information required by the final rule or when necessary to make a determination to comply with the rule, to reasonably rely on information provided by other persons. This change from the proposed rule is explained in detail in Section III.B.4.

11. 31 CFR 1031.320(k) Filing Procedures

Proposed Rule. Proposed 31 CFR 1031.320(k) set forth a requirement that reporting persons file a Real Estate Report with FinCEN no later than 30 calendar days after the date of a given closing.

Comments Received. One transparency organization supported the 30-day filing period, arguing that 30 days is both reasonable and necessary to ensure that current and useful information is available to law enforcement soon after a reportable transfer takes place. Two other commenters, however, argued that a 30-day window would be too short a timeframe in which to gather the required information and that it would be burdensome to monitor differing filing dates for each reportable transfer. As an alternative, these commenters proposed an annual filing deadline, akin to IRS Form 1099-S, with another suggesting that a quarterly filing deadline would also be an improvement.

Final Rule. In the final rule, FinCEN adopts, in 31 CFR 1031.320(k)(3), a reporting deadline of the final day of the following month after which a closing took place, or 30 days after the date of the closing, whichever is later. FinCEN believes that this approach will reduce date tracking burdens for industry and may further reduce the logistical burden of compliance by providing a longer period of time in which to gather the reportable information, while still providing timely information to law enforcement. FinCEN recognizes that Real Estate Reports are unique when compared with other BSA reports and therefore necessitate a unique reporting deadline. Real Estate Reports require more information than forms such as a CTR or Form 8300—both required to be filed within 15 days of a transaction—

and the information may need to be gathered from a variety of sources, and not just from the single individual conducting the transaction. Relatedly, traditional SARs, which must be filed within 30 days after suspicious activity is detected, also frequently rely on information known to the filer and, critically, are filed by financial institutions required to have AML programs. FinCEN believes the final filing date will benefit both reporting persons and law enforcement by ensuring reporting persons have sufficient time to gather information, resulting in more complete and accurate reports.

FinCEN believes that a filing period longer than adopted here would adversely impact the utility of the reports for law enforcement and that the extended filing period adopted in this final rule strikes the appropriate balance between accommodating commenters' concerns and ensuring timely reporting of transfers, particularly given other modifications and clarifications in this rule. In particular, FinCEN believes that the adoption of the reasonable reliance standard will significantly reduce the time needed to file the form compared to verifying the accuracy of each piece of information. FinCEN therefore declines to adopt the longer quarterly or annual suggested filing periods.

The final rule deletes as unnecessary the reference in proposed 31 CFR 1031.320(k) to the collection and maintenance of supporting documentation. In contrast with a traditional SAR requirement, the requirement to file a Real Estate Report does not require the reporting person to maintain records documenting the reasons for filing, and therefore there is no need to consider such documentation to have been deemed filed with the Real Estate Report, or to reference such documentation when discussing what a reporting person should file.

12. 31 CFR 1031.320(l) Retention of Records

Proposed Rule. Proposed 31 CFR 1031.320(l) set forth a requirement that reporting persons maintain a copy of any Real Estate Report filed and a copy of any beneficial ownership certification form provided to them for five years. It also proposed that all parties to any designation agreement maintain a copy of the agreement for five years.

Comments Received. Several commenters stated that retaining records for five years represents an ongoing data storage cost and increases concerns about data security. Two commenters expressed concern that

collecting and retaining the information that reporting persons would need to FinCEN to report would run counter to the principles that underly certain State laws that the comments stated were designed to protect data privacy. One commenter argued that there were Fourth Amendment implications for the records retention requirement, which they viewed as requiring businesses to maintain records and produce them to law enforcement on demand. However, a transparency organization supported the proposed five-year recordkeeping requirement, noting also that FinCEN would need access to the designation agreement to determine who had responsibility for filing the report in a particular transfer.

Final Rule. The final rule retains the requirement that certain records be kept for five years but limits the requirement to a copy of any beneficial ownership certification form that was provided to the reporting person, as well as a copy of any designation agreement. As amended, the rule does not require reporting persons to retain a copy of a Real Estate Report that was submitted to FinCEN. FinCEN believes that eliminating the requirement to retain a Real Estate Report may reduce concerns related to data security and to costs associated with the retention of records. FinCEN also notes, more generally, that the BSA reporting framework has long been held to be consistent with the Fourth Amendment of the U.S. Constitution.⁴²

While FinCEN considered eliminating the record retention requirement in its entirety, it believes that it is necessary to the enforceability of the rule that reporting persons retain copies of documents that will not be filed with FinCEN—namely, a copy of any beneficial ownership information certification form and any designation agreement to which a reporting person is a party. Furthermore, FinCEN has retained the requirement in the proposed rule that all parties to a designation agreement—not just the reporting person—must retain a copy of such designation agreement, also to ensure enforceability of the rule. As previously stated, records that are required to be retained must be maintained for a period of five years.

13. 31 CFR 1031.320(m) Exemptions

Proposed Rule. Proposed 31 CFR 1031.320(m)(1) exempted reporting persons, and any director, officer, employee, or agent of such persons, and Federal, State, local or Tribal government authorities, from the

confidentiality provision in 31 U.S.C. 5318(g)(2) that prohibits the disclosure to any person involved in a suspicious transaction that the transaction has been reported or any information that would otherwise reveal that the transaction has been reported.

Proposed 31 CFR 1031.320(m)(2) confirmed that the exemption from the requirement to establish an AML program, in accordance with 31 CFR 1010.205(b)(1)(v), would continue to apply to those businesses that may be reporting persons under the final rule. It also stated that no such exemption applies for a financial institution that is otherwise required to establish an anti-money laundering program, as provided in 31 CFR 1010.205(c).

Comments Received. FinCEN received one comment by 25 Attorneys General that supported the exemption of Federal, State, local, or Tribal government authorities from the confidentiality provision. Additionally, one industry association supported the proposed rule's exemption for reporting persons from establishing an AML program.

Final Rule. In the final rule, FinCEN adopts 31 CFR 1031.320(m) largely as proposed, with one minor deletion for consistency. As in the NPRM, FinCEN recognizes that the confidentiality provision in 31 U.S.C. 5318(g)(2) applying to financial institutions that file SARs is not feasible with the Real Estate Report, as reporting persons needs to collect information directly from the subjects of the Report, thus revealing its existence. Moreover, all parties to a non-financed residential real estate transfer subject to this rule would already be aware that a report would be filed, given such filing is non-discretionary, rendering confidentiality unnecessary. The final rule maintains the exemption from the requirement for reporting persons to establish an AML program. However, given the change discussed earlier explicitly excluding financial institutions with AML program obligations from the definition of a reporting person, the sentence referring to such financial institutions has been deleted.

14. 31 CFR 1031.320(n) Definitions

Proposed Rule. The proposed rule set forth several definitions in 31 CFR 1031.320(j) for key concepts, such as “transferee entity,” “transferee trust,” and the beneficial owners of these aforementioned entities.

Comments Received. FinCEN received comments related to the definition of “Beneficial owner,” discussed above in Section III.C.5.c; “Residential real property,” discussed above in Section

⁴² *U.S. v. Miller*, 425 U.S. 435 (1976).

III.C.2.a; “Transferee entity,” discussed above in Section III.C.2.d; and “Transferee trust,” discussed above in Section III.C.2.e. FinCEN did not receive comments on other proposed definitions.

Final Rule. For clarity, in the final rule, FinCEN moves the paragraph containing definitions to the end of the regulations, so that they appear at 31 CFR 1031.320(n). In addition to modifications and clarifications discussed in the sections referenced above, the rule adopts the following modifications:

- The definition of “closing or settlement statement” is limited to the statement prepared for the transferee, as discussed in Section III.C.3.a;
- The rule adds a definition for “Non-financed transfer” for clarity, as discussed in Section III.C.2.b;
- The rule is meant to be applied nationwide, and therefore the definition of “Recordation office” is modified to make clear that the recordation office may be located in a territory or possession of the United States, and is not limited to State, local, or Tribal offices for the recording of reportable transfers as a matter of public record. As a result, a person may be a reporting person if they file a deed or other instrument that transfers ownership of the residential real property with a recordation office located in any state, local jurisdiction, territory of possession of the United States, or Tribe;
- For clarity, the term “Residential real property” is removed from the list of definitions found in 31 CFR 1031.320(n) and is instead defined in 31 CFR 1031.320(b).

The remaining definitions are adopted as proposed.

IV. Effective Date

Proposed Rule. The NPRM proposed that the final rule would be effective one year after the final rule is published in the **Federal Register**.

Comments Received. Several industry commenters agreed that a one-year delayed effective date is necessary to implement the requirements, with some indicating that one year, at a minimum, would be feasible. One commenter suggested that the final rule be implemented in phases to allow industry time to adapt to the regulation.

Final Rule. The final rule provides for an effective date of December 1, 2025, at which point reporting persons will be required to comply with all of the rule’s requirements, chief among them the requirement to file Real Estate Reports with FinCEN. FinCEN believes that this effective date, which delays the effective date by slightly more than the one-year

that industry commenters generally supported at a minimum, will provide additional opportunity for potential reporting persons to understand the requirements of the rule and put appropriate compliance measures into place. Furthermore, this effective date will provide FinCEN with the additional time necessary to issue the Real Estate Report, including the completion of any process required by the Paperwork Reduction Act (PRA).

However, FinCEN declines to adopt a phased approach to implementation of the rule, such as by initially limiting the reporting obligation to persons performing a limited number of functions described in the reporting cascade or phasing-in the rule geographically. FinCEN believes a phased approach would likely create unneeded complexity for industry, as industry would need to adapt processes and procedures multiple times over the implementation period. A phased implementation would also undermine the effectiveness of the rule for an extended period of time. The rule is intended to provide comprehensive reporting for a subset of high-risk residential real estate transfers; phased implementation may enable avoidance of reporting requirements by illicit actors, replicating some of the issues FinCEN has encountered under the Residential Real Estate GTOs.

V. Severability

If any of the provisions of this rule, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Indeed, the provisions of this rule can function sensibly if any specific provision or application is invalidated, enjoined or stayed. For example, if a court were to hold as invalid the application of the rule with respect to any category of potential reporting persons, FinCEN would preserve the reporting cascade approach for all other persons that perform the functions set out in the cascade. In such an instance, the provisions of the rule should remain in effect, as those provisions could function sensibly with respect to other potential reporting persons. Likewise, if a court were to hold invalid the application of the rule to any category of residential real property, as defined, the other categories should still remain covered. Because these categories operate independently from each other, the remainder of the rule’s provisions

could continue to function sensibly: a reportable transfer would continue to be a non-financed transfer of any ownership interest in the remaining categories of residential real property when transferred to a transferee entity or transferee trust. Similarly, with respect to transferee entities and transferee trusts, if a court were to enjoin FinCEN from enforcing the rule’s reporting requirements as applied to, for example, transferee trusts, the reporting of transfers to transferee entities should continue because the two types of transferees are separate and distinct from one another. Thus, even if the transferee trust provisions were severed from the rule, the remaining portions of the rule could still function sensibly. In sum, in the event that any of the provisions of this rule, or the application thereof to any person or circumstance, is held to be invalid, FinCEN has crafted this rule with the intention to preserve its provisions to the fullest extent possible and any adverse holding should not affect other provisions.

VI. Regulatory Analysis

This regulatory impact analysis (RIA) evaluates the anticipated effects of the final rule in terms of its expected costs and benefits to affected parties, among other economic considerations, as required by EOs 12866, 13563, and 14094. This RIA also affirms FinCEN’s original assessments of the potential economic impact on small entities pursuant to the Regulatory Flexibility Act (RFA) and presents the expected reporting and recordkeeping burdens under the Paperwork Reduction Act of 1995 (PRA). Furthermore, it sets out the analysis required under the Unfunded Mandates Reform Act of 1995 (UMRA).

As discussed in greater detail below, the rule is expected to promote national security objectives and enhance compliance with international standards by improving law enforcement’s ability to identify the natural persons associated with transfers of residential real property conducted in the U.S. residential real estate sector, and thereby diminish the ability of corrupt and other illicit actors to launder their proceeds through real estate purchases in the United States. More specifically, the collection of the transfer-specific SARs—Real Estate Reports—in a repository that is readily accessible to law enforcement and that contains other BSA reports is expected to increase the efficiency with which resources can be utilized to identify such natural persons, or beneficial owners, when they have conducted non-financed purchases of residential real

property using legal entities or trusts, and to cross-reference those beneficial owners and their legal entity or trust against other reported financial activities in the system.

This RIA first describes the economic analysis FinCEN undertook to inform its expectations of the rule's impact and burden. That is followed by certain pieces of additional and, in some cases, more specifically tailored analysis as required by EOs 12866, 13563, and 14094, the RFA, the UMR, and the PRA, respectively. Responses to public comments related to the RIA—regarding specific findings, assumptions, or expectations, or with respect to the analysis in its entirety—can be found in Sections VI.A.1.b and VI.C and have been previewed and cross-referenced throughout the RIA.

A. Assessment of Impact

This final rule has been determined to be a “significant regulatory action” under Section 3(f) of E.O. 12866 as amended by 14094. The following assessment indicates that the rule may also be considered significant under Section 3(f)(1), as the rule is expected to have an annual effect on the economy of \$200 million or more.⁴³ Consistent with certain identified best practices in regulatory analysis, the economic analysis conducted in this section begins with a review of FinCEN's broad economic considerations,⁴⁴ identifying the relevant market failures (or fundamental economic problems) that demonstrate the need or otherwise animate the impetus for the policy intervention.⁴⁵ Next, the analysis turns to details of the current regulatory requirements and the background of market practices against which the rule will introduce changes (including incremental costs) and establishes FinCEN's estimates of the number of entities and residential real property transfers it anticipates to be affected in a given year.⁴⁶ The analysis then briefly reviews the final rule with a focus on the specifically relevant elements of the definitions and requirements that most directly inform how FinCEN contemplates compliance would be operationalized.⁴⁷ Next, the analysis proceeds to outline the estimated costs to the respective affected parties that

would be associated with such operationalization.⁴⁸ Finally, the analysis concludes with a brief discussion of the regulatory alternatives FinCEN considered in the NPRM, including a discussion of the public comments received in response.⁴⁹ Throughout the analysis, FinCEN has attempted to incorporate public comments received in response to the NPRM where most relevant. Certain broad commentary themes that are pertinent to the RIA as a whole are addressed specifically in Sections VI.A.1.b and VI.C below, while the remainder are integrated into the general discussion throughout the rest of the analysis.

1. Economic Considerations

a. Broad Economic Considerations

As FinCEN articulated in the RIA of the NPRM, two problematic phenomena animate this rulemaking.⁵⁰ The first is the use of the United States' residential real estate market to facilitate money laundering and illicit activity. The second, and related, phenomenon is the difficulty of determining who beneficially owns legal entities or trusts that may engage in non-financed transfers of residential real estate, either because this data is not available to law enforcement or access is not sufficiently centralized to be meaningfully usable for purposes of market level risk-monitoring or swift investigation and prosecution. The second phenomenon contributes to the first, making money laundering and illicit activity through residential real property more difficult to detect and prosecute, and thus can reduce the appropriate disciplinary and deterrent effects of law enforcement. FinCEN therefore expects that the reporting of non-financed residential real estate transfers required by this rule would generate benefits by mitigating those two phenomena. In other words, FinCEN expects that benefits would flow from the rule's ability to make law enforcement investigations of illicit activity and money laundering through residential real estate less costly and more effective, and it would thereby generate value by reducing the social costs associated with related illicit activity to the extent that it is more effectively disciplined or deterred.

b. Consideration of Comments Received

In completing the analysis to accompany the final rule, FinCEN took

all submitted public comments to the NPRM into consideration. While the NPRM received over six hundred comment letters, fewer than 25 percent of those comments presented non-duplicate content and a smaller fraction still provided comment specifically with respect to the NPRM RIA. The proportion of comment letters with non-duplicate content represents highly geographically concentrated and geographically unique feedback, which may therefore limit the generalizability of those responses regarding baseline and burden-related elements to other regions of the country and other local real estate markets that do not face the same general housing market trends or state-specific legal constraints. Where FinCEN has declined to revise its original analysis in response to certain comments, an attempt has been made to provide greater clarification of the reasons underlying FinCEN's original methodological choices and expectations.

i. Comments Pertaining to Burden Estimates

Numerous comment letters spoke to the anticipated burden of the rule, though there was substantial variation in parties' expectations about which participant in a reportable transfer would ultimately bear the financial costs. Some commenters expressed concern that, if required to serve as the reporting person, they would not be able to absorb the related costs. The majority of these commenters, however, did not offer any explanation for why they would therefore not opt to designate to another cascade member, though presumably the assumption may have been that no other cascade member might be willing to agree. This assumption may or may not be consistent with countervailing incentives other cascade members face in facilitating reportable transfers. Other commenters suggested that certain reporting persons might be forced to absorb a large proportion of the rule's costs due simply to their considerable market share in their particular industry. Additionally, a substantial fraction of those who commented on the burden of the rule signaled their expectation that to some degree the financial costs would ultimately be passed along to the transferee, the transferee's tenants, or to all housing market clients served by that potential reporting person.

For purposes of the economic analysis, FinCEN notes that there may be a meaningful distinction between the concept of being burdened, or affected, by the rule and bearing the cost of the

⁴³ E.O. 12866, 58 FR 51735 (Oct. 4, 1993), section 3(f)(1); E.O. 14094, 88 FR 21879 (Apr. 11, 2023), section 1(b).

⁴⁴ See Section VI.A.1.

⁴⁵ Broadly, the anticipated economic value of a rule can be measured by the extent to which it might reasonably be expected to resolve or mitigate the economic problems identified by such review.

⁴⁶ See Section VI.A.2.

⁴⁷ See Section VI.A.3.

⁴⁸ See Section VI.A.4.

⁴⁹ See Section VI.A.5.

⁵⁰ See FinCEN, NPRM, “Anti-Money Laundering Regulations for Residential Real Estate Transfers,” 89 FR 12424 (Feb. 16, 2024).

rule. A party may be the primary affected business in terms of needing to undertake the most new burden or incremental, novel activity to comply with the rule, but to the extent that that work is compensated, that party, for purposes of the RIA is not considered to also bear the cost of the rule. The comments FinCEN received in response to the NPRM suggest that there may be considerable variation across states in the distinction between where businesses may be primary affected businesses only and where businesses may be both those primarily affected and those that bear the majority of the rule's costs.

Separately, FinCEN notes that while the vast majority of comment letters spoke to at least one element of burden as a concern, very few provided competing estimates or alternative methods to quantify the expected burden of the proposed rule in its entirety. Many commenters, in fact, took FinCEN estimates as given when making their own arguments, suggesting that at least on some level, they found the estimates reasonably credible. In cases where commenters most strongly disagreed with the magnitude of FinCEN estimates (suggesting that FinCEN vastly underestimated the burden of the rule), it is unclear whether the same differences would persist in light of the clarifications and modifications to the proposed rule that have been made in the process of finalization. Given the divergence between what some commenters originally interpreted the rule to require of them and what the final rule would entail, a number of those concerns—including concerns related to the expected verification of information that are addressed by the reasonable reliance standard adopted in the final rule—may now be less pressing.

The primary revision that FinCEN has made to the RIA in response to commenters is with respect to wage estimates for the industry categories represented in the reporting cascade. In addition to updating wages to incorporate the BLS's most recent annual figures, FinCEN also elected to incorporate the 90th percentile wage values instead of the national average index values used in the NPRM RIA. This more conservative approach is meant to address certain commenter concerns that FinCEN's expected costs might underestimate the market wage rates reporting persons would need to pay, particularly because more reporting might occur in geographic areas where skilled labor commands higher compensation. Adopting this more conservative, higher wage rate approach

does not reflect any change in FinCEN's expectations about the underlying burden of compliance with the rule.

ii. Comments Suggesting Additional Analysis

A few comment letters suggested that FinCEN's analysis may have benefited from additional research activities, robustness tables, or analyses of distributional effects. While in principle FinCEN does not object to more, and more empirically robust, quantitative analysis of any of its policies, it is nevertheless unpersuaded that the analyses requested would have changed the conclusions those additional analytical activities would have informed. In none of the enumerated requests for additional analysis did the commenter convincingly substantiate how the findings of their requested items might have actionably changed the contours of the final policy without impairing its expected efficacy.

2. Baseline and Affected Parties

To assess the anticipated regulatory impact of the rule, FinCEN took several factors about the current state of the residential real estate market into consideration. This is consistent with established best practices and certain requirements⁵¹ that the expected economic effects of a rule be measured against the status quo as a primary counterfactual. Among other factors, FinCEN's economic analysis of regulatory impact considered the rule in the context of existing regulatory requirements, relevant distinctive features of groups likely to be affected by the rule, and pertinent elements of current residential real estate market characteristics and common practices. Each of these elements, including additional details and clarifications responsive to comments received, is discussed in its respective subsection below.

a. Regulatory Baseline

While there are no specific Federal rules that would directly and fully duplicate, overlap, or conflict with the rule, there are nevertheless components of the rule that mirror, or are otherwise consistent with, reporting and procedural requirements of existing FinCEN rules and orders, as well as those of other agencies. To the extent that a person would have previous compliance experience with these elements of the regulatory baseline, FinCEN expects that some costs

associated with the rule would be lower because the incremental changes in behavior from current practices would be smaller. FinCEN reviews the most proximate components from these existing rules and orders in greater detail below.

i. Residential Real Estate GTOs

Under the Residential Real Estate GTOs, covered title insurance companies are required to report: "(i) The dollar amount of the transaction; (ii) the type of transaction; (iii) information identifying a party to the transaction, such as name, address, date of birth, and tax identification number; (iv) the role of a party in the transaction (*i.e.*, originator or beneficiary); and (v) the name, address, and contact information for the domestic financial institution or nonfinancial trade or business."

As discussed above, FinCEN recognizes that the Residential Real Estate GTOs collect beneficial ownership information for certain non-financed purchases of residential real property by legal entities that meet or exceed certain dollar thresholds in select geographic areas. However, the Residential Real Estate GTOs are narrow in that they are temporary, location-specific, and limited in the transactions they cover. The rule is wider in scope of coverage and will collect additional useful and actionable information previously not available through the Residential Real Estate GTOs. As such, the nationwide reporting framework for certain residential real estate transfers will replace the current Residential Real Estate GTOs.

Some evidence suggests that, despite the restriction of reporting persons under the existing Residential Real Estate GTOs to title insurance companies only, certain additional categories of real estate professionals may already be familiar—and have experience—with gathering the currently required information. For example, FinCEN observes that in some markets presently covered by the Residential Real Estate GTOs, realtors and escrow agents often assist title insurance companies with their reporting obligations despite not being subject to any formal reporting requirements themselves. Some may even have multiple years' worth of guidance and informational support by the regional or national trade association of which they are a member in how best to facilitate and enable compliance with existing FinCEN requirements. For instance, in 2021, the National Association of Realtors advised that while "[r]eal estate professionals do

⁵¹ Office of Management and Budget, Circular A-4 (Nov. 9, 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf>.

not have any affirmative duties under the Residential Real Estate GTOs,” such entities should nevertheless expect that “a title insurance company may request information from real estate professionals to help maintain its compliance with the Residential Real Estate GTOs. Real estate professionals are encouraged to cooperate and provide information in their possession.”⁵² Thus, the historical Residential Real Estate GTOs’ attempt to limit the definition of reporting persons to title insurance companies does not seem to have completely forestalled the imposition of time, cost, and training burdens on other real estate transfer-related businesses. As such, the cascading reporting approach might not mark a complete departure from current practices and the related burdens of Residential Real Estate GTO requirements, as they may already in some ways be functionally applicable to multiple prospective reporting persons in the rule’s reporting cascade.

ii. BOI Reporting Rule

Furthermore, following the enactment of the CTA, beneficial ownership information of certain legal entities is required to be submitted to FinCEN. However, as set out in the NPRM preamble and also discussed above,⁵³ the information needed to ascertain money laundering risk in the residential real estate sector differs in key aspects from what is collected under the CTA, and, accordingly, the information collected under this rule differs from that collected under the CTA.

For example, FinCEN believes that a critical part of the rule is that it will alert law enforcement to the fact that a residential real estate transfer fitting within a known money laundering typology has taken place. While beneficial ownership information collected under the CTA may be available, that information concerns the ownership composition of a given entity at a given point in time. As such reporting does not dynamically extend to include information on the market transactions of the beneficially owned legal entity, it would not alert law enforcement officials focused on reducing money laundering that any real estate transfer has been conducted, which includes those particularly vulnerable to money laundering such as non-financed transfers of residential property.

Furthermore, the scope of entities that are the focus of the real estate rule is broader than the CTA, as certain types of entities, including most trusts, are not required to report under the CTA. Because non-excepted trusts under the residential real estate rule generally do not have an obligation to report beneficial ownership under the CTA, their incremental burden of compliance with the Real Estate Report requirements may be moderately higher insofar as the activities of collecting, presenting, or certifying beneficial ownership information are less likely to have already been performed for other purposes.

iii. Customer Due Diligence (CDD) Rule

The CDD Rule’s⁵⁴ beneficial ownership requirement addressed a regulatory gap that enabled persons looking to hide ill-gotten proceeds to potentially access the financial system anonymously. Among other things, it required covered financial institutions to identify and verify the identity of beneficial owners of legal entity customers, subject to certain exceptions and exemptions; beneficial ownership and identification therefore became a component of AML requirements.

Financial institutions subject to the CDD Rule are required to collect some beneficial ownership information from legal entities that establish new accounts. However, this rule covers non-financed transfers of residential real estate that do not involve financial institutions covered by the CDD Rule. The rule would also collect additional information relevant to the real estate transfers that is currently not collected under the CDD Rule.

iv. Other (Form 1099-S)

In the course of current residential real estate transfers, some parties that might be deemed “transferors” under the rule already prepare and report portions of the requisite information to other regulators. For example, the IRS collects taxpayer information through Form 1099-S on seller-side proceeds from reportable real estate transfers for a broader scope of reportable real estate transfers than this rule.⁵⁵ This information, however, is generally unavailable for one of the primary purposes of this rule, as there are

significant statutory limitations on the ability of the IRS to share such information with Federal law enforcement or other Federal agencies. In addition to these statutory limitations on IRS disclosure of taxpayer information, details about the buyer’s beneficial ownership (the focus of this rule) largely fall outside the scope of transaction information reported on the Form 1099-S.

However, IRS Form 1099-S is nonetheless relevant to the rule’s regulatory baseline, given the process by which the Form 1099-S may be prepared and submitted to the IRS. Similar to the Real Estate Report, the person responsible for filing the IRS Form 1099-S can either be determined through a cascade of the various parties who may be involved in the closing or settlement process, or, alternatively, certain categories of the involved parties may enter into a written agreement at or before closing to designate who must file Form 1099-S for the transaction. The agreement must identify the designated person responsible for filing the form, but it is not necessary that all parties to the transaction, or that more than one party even, enter into the agreement. The agreement must: (1) identify by name and address the person designated as responsible for filing; (2) include the names and addresses of each person entering into the agreement; (3) be signed and dated by all persons entering into the agreement; (4) include the names and addresses of the transferor and transferee; and (5) include the address and any other information necessary to identify the property. The rule’s designation agreement requires, and is limited to, the same five components that may be included in a designation agreement accompanying Form 1099-S. Therefore, the exercise of designation, as well as the collection of information and signatures that it involves, may already occur in connection with certain transfers of residential real property and in these cases be leveraged at minimal additional expense.

⁵⁴ FinCEN, “Customer Due Diligence Requirements for Financial Institutions,” 81 FR 29398 (May 11, 2016).

⁵⁵ Reportable real estate for purposes of IRS Form 1099-S includes, for example, commercial and industrial buildings (without a residential component) and non-contingent interests in standing timber, which are not covered under the rule.

⁵² See National Association of Realtors, “Anti-Money Laundering Voluntary Guidelines for Real Estate Professionals” (Feb. 16, 2021), p. 3, available at <https://www.narfocus.com/billdatabase/clientfiles/172/4/1695.pdf>.

⁵³ See Section III.C.5.c.

b. Baseline of Affected Parties

i. Transferees

Legal Entities

According to a recent study⁵⁶ that analyzed Ztrax data⁵⁷ covering 2,777 U.S. counties and over 39 million residential housing market transactions from 2015 to 2019, the proportion of average county-month non-financed residential real estate transactions involving purchases by legal entities was approximately 11 percent during the five-year period analyzed. When the sample is divided into counties that, by 2019, were under Residential Real Estate GTOs versus those that were never under Residential Real Estate GTOs, the proportions of average county-month non-financed sales to total purchases are approximately 13.6 percent and 11.2 percent, respectively.

Legal entities that own U.S. residential real estate vary by size and complexity of beneficial ownership structure, and by some measures, have increased market participation over time.⁵⁸ FinCEN analysis of the Department of Housing and Urban Development and Census Bureau's Rental Housing Finance Survey (RHFS) data for 2018 found that micro investors or small business landlords who owned 1–2 units owned 66 percent of all single family and multifamily structures with 2–4 units. Conversely, investors in the residential rental market who owned at least 1,000 properties owned only 2 percent of single-family homes and multi-family structures.

FinCEN did not receive any comments, studies, or data that meaningfully conflict with these estimates or the manner in which they informed the NPRM RIA's initial estimates of the number of reportable transfers per year.

Trusts

The final rule requires the reporting of certain non-finance transfers of residential real property to transferee trusts.⁵⁹ Residential real property purchases by transferee trusts have not

generally been reported under the Residential Real Estate GTOs and the entities themselves are typically⁶⁰ not subject to beneficial ownership reporting requirements under the CTA. Therefore, FinCEN expects that trusts would be more homogeneously newly affected by the rule than legal entities, discussed above, as a cohort of affected parties.

Establishing a baseline population of potentially affected transferee trusts based on the existing population of legal trusts is challenging for several reasons. These reasons include the general lack of comprehensive and aggregated data on the number,⁶¹ value, usage, and holdings of trusts formed in the United States, which in turn is a result of heterogeneous registration and reporting requirements, including instances where neither requirement currently exists. Because domestic trusts are created and administered under State law, and states have broad authority in how they choose to regulate trusts, there is variation in both the proportion of potential transferee trusts that are currently required to register as trusts in their respective states as well as the amount of information a given trust is required to report to its state about the nature of its assets or its structural complexity. Thus, limited comparable information may be available at a nationwide level besides what is reported for Federal tax purposes, and what is available is unlikely to represent the full population of potentially affected parties that would meet the definition of transferee trust if undertaking the non-financed transfer of residential real property.

International heterogeneity in registration and reporting requirements for foreign trusts creates similar difficulties in assessing the population of potentially affected parties that are not originally registered in the United States. Further complicating this assessment is the exogeneity and unpredictability of changes to foreign tax and other financial policies, which studies in other, related contexts have shown, generally affect foreign demand for real estate.⁶²

While it is difficult to know exactly how many existing trusts there are, and within that population how many own residential real property (as a potential indicator of what proportion of new trusts might eventually be used to own residential real property), there is nevertheless a consistency in the limited existing empirical evidence that would support a conjecture that proportionally few of the expected reportable transfers would be likely to involve a transferee trust. A recent study of U.S. single-property residential purchases that occurred between 2015 and 2019 identified a trust as the buyer in 3.3 percent of observed transactions.⁶³ FinCEN also conducted additional analysis of publicly available data that might help to quantify the proportion of trust ownership in residential real estate and more clearly account for non-sale transfers for no consideration. Based on the RHFS, identifiable trusts accounted for approximately 2.5 percent of rental housing ownership and approximately 8.2 percent of non-natural person ownership of rental housing.⁶⁴

To the extent that trusts' current residential real property holdings are linear in the number of housing units and current holdings is a reliable proxy for future purchasing activity, FinCEN does not expect the proportion of reportable transfers involving a transferee trust to exceed 5 percent of potentially affected transfers. No further refinements to this upper-bound-like estimate, based on the number of existing trusts that may be affected, would be feasible without a number of additional assumptions about market behavior that FinCEN declines to impose in the absence of better/more data.

While the majority of public comments pertaining to trusts suggested that the number of affected trusts would be substantially higher than the original RIA had anticipated, FinCEN is not revising or updating its baseline

⁵⁶ See Matthew Collin, Florian Hollenbach, and David Szakonyi, "The impact of beneficial ownership transparency on illicit purchases of U.S. property," Brookings Global Working Paper #170, (Mar. 2022), p. 14, available at <https://www.brookings.edu/wp-content/uploads/2022/03/Illicit-purchases-of-US-property.pdf>.

⁵⁷ Zillow, Transaction and Assessment Database (ZTRAX), available at <https://www.zillow.com/research/ztrax/>.

⁵⁸ See Redfin, "Investors Bought 26% of the Country's Most Affordable Homes in the Fourth Quarter—the Highest Share on Record," (Feb. 14, 2024), available at <https://www.redfin.com/news/investor-home-purchases-q4-2023/>.

⁵⁹ See Section III.C.2.e.

⁶⁰ FinCEN notes that while most trusts are not reporting companies under the BOI Reporting Rule, a reporting company would be required to report a beneficial owner that owned or controlled the reporting company through a trust.

⁶¹ FinCEN notes that while the U.S. Census Bureau does produce annual statistics on the population of certain trusts (NAICS 525—Funds, Trusts, and Other Financial Vehicles), such trusts are unlikely to be affected by the rule and thus their population size is not informative for this analysis.

⁶² See, e.g., Cristian Badrinza and Tarun Ramadorai, "Home away from home? Foreign demand and London House prices," Journal of

Financial Economics 130 (3) (2018), pp. 532–555, available at <https://www.sciencedirect.com/science/article/abs/pii/S0304405X18301867?via%3Dihub>; see also Caitlan S. Gorbach and Benjamin J. Keys, "Global Capital and Local Assets: House Prices, Quantities, and Elasticities," Technical Report, National Bureau of Economic Research (2020), available at <https://www.nber.org/papers/w27370>.

⁶³ See Matthew Collin, Florian Hollenbach, and David Szakonyi, "The impact of beneficial ownership transparency on illicit purchases of U.S. property," Brookings Global Working Paper #170, (Mar. 2022), p. 14, available at <https://www.brookings.edu/wp-content/uploads/2022/03/Illicit-purchases-of-US-property.pdf>.

⁶⁴ See U.S. Census Bureau, Rental Housing Finance Survey (2021), available at https://www.census.gov/data-tools/demo/rhfs/#/?s_year=2018&s_type=1&s_tableName=TABLE2.

estimates at this stage because the final rule has adopted certain broad exceptions that materially limit the reporting of transfers to trusts.

Excepted Transferees

Exceptions to the general definitions of transferee entities and transferee trusts apply to certain highly regulated entities and trusts that are subject to AML/CFT program requirements or to other significant regulatory reporting requirements.

For example, PIVs that are investment companies and registered with the SEC under section 8 of the Investment Company Act of 1940 are excepted, while unregistered PIVs engaging in reportable transfers are not. Unregistered PIVs are instead required to provide the reporting person with specified information, particularly including the required information regarding their beneficial owners. FinCEN analysis of costs below continues to assume that any such unregistered PIV stood up for a reportable transfer would generally have, or have low-cost access to, the information necessary for filing Real Estate Reports. FinCEN expects that a PIV that is not registered with the SEC—which can have at maximum four investors whose ownership percent is or exceeds 25 percent (the threshold for the ownership prong of the beneficial ownership test for entities)—would likely either (1) be an extension of that large investor, or (2) have a general partner who actively solicited known large investors. In either case, the unregistered PIV is likely to have most of the beneficial ownership information that would be required to complete the Real Estate Report and access to the beneficial owner(s) to request the additional components of required information not already at hand. FinCEN did not receive any comments indicating that these expectations are unreasonable and thus continues to operate under these assumptions with respect to baseline costs.

Operating companies subject to the Securities Exchange Act of 1934's current and periodic reporting requirements, including certain special purpose acquisition companies (SPACs) and issuers of penny-stock, are also excepted transferees under this rule. FinCEN notes that the percent ownership threshold for beneficial ownership for SEC regulatory purposes is considerably lower than as defined in the CTA and related Exchange Act beneficial ownership-related disclosure obligations usually apply to more control persons at such a registered

operating company.⁶⁵ Additionally, disclosures about the acquisition of real estate, including material non-financed purchases of residential property, are already required in certain periodic reports filed with the SEC.⁶⁶ Therefore, an incremental informational benefit from not excepting SEC-registered operating companies as transferees for the purposes of this rule's reporting requirements may either not exist or, at best, be very low while the costs to operating companies of reporting and compliance with an additional Federal regulatory agency are expected to be comparatively high.

Some commenters expressed concern that it might be difficult or burdensome for reporting persons to determine if a transfer might be exempt from reporting on the basis of the transfer being made to an excepted transferee. However, the final rule adopts a reasonable reliance standard, and therefore the reporting person may reasonably rely on information provided by others as described in Section III.B.2.4, including with respect to whether the transferee is exempt. Furthermore, should a reporting person nevertheless want to verify the excepted status of a transferee, FinCEN notes that the status of transferees as excepted pursuant to being registered with the SEC should be easily verifiable by a name search in the agency's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system, which can be queried using open access, publicly available search tools.

ii. Reporting Entities

Because the reporting cascade is ordered by function performed, or service provided, rather than by defined occupations or categories of service providers,⁶⁷ attribution of work to the capacity in which a person is primarily employed is necessarily imprecise. To account for the need to map from services provided to entities providing such services as a prerequisite to estimating the number of potentially affected parties, FinCEN acknowledges, but abstracts from, the common observation that title agents and settlement agents are “often the same entity that performs two separate functions in a real estate transaction,”

⁶⁵ See U.S. Securities and Exchange Commission, “Officers, Directors, and 10% Shareholders,” available at <https://www.sec.gov/education/smallbusiness/goingpublic/officersanddirectors>.

⁶⁶ See, e.g., U.S. Securities and Exchange Commission, Instructions to Item 2.01 on Form 8-K; see also 17 CFR 210.3–14.

⁶⁷ See *supra* Section III.C.3.a for a description of the reporting cascade; see also proposed 31 CFR 1031.320(c)(1).

and that “the terms title agent and settlement agent are often used interchangeably.”⁶⁸ For purposes of the remaining RIA, FinCEN groups potential reporting persons by features of their primary occupation and treats them as functionally distinct members of the cascade, acknowledging that this is done more for analytical clarity than as a rigid expectation about the capacity in which an individual is employed to service a given transfer. In total, FinCEN estimates there may be up to approximately 172,753 reporting persons and 642,508 employees of those persons that could be affected by the rule. Of this total, the distribution of potential reporting persons as identified by primary occupation⁶⁹ is: settlement agents (3.6 percent of potential reporting persons, 9.8 percent of the potentially affected labor force), title insurance companies (0.5 percent, 6.6 percent), real estate escrow agencies (10.9 percent, 10.5 percent), attorneys⁷⁰ (9.3 percent, 16.7 percent), and other real estate professionals⁷¹ (75.5 percent, 56.4 percent). For purposes of cost estimates throughout the remaining analysis, FinCEN computed the

⁶⁸ See Nam D. Pham, “The Economic Contributions of the Land Title Industry to the U.S. Economy,” ndp Consulting (Nov. 2012), p. 6, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2921931. This study was included as an appendix to a 2012 American Land Title Association comment letter submitted to the Consumer Financial Protection Bureau (CFPB) on the Real Estate Settlement Procedures Act (RESPA).

⁶⁹ FinCEN notes that the capacity in which a reporting person facilitates a residential real property transfer may not always be in the capacity of their primary occupation. However, as analysis here relies on the U.S. Census Bureau's annual Statistics of U.S. Business Survey, which is organized by NAICS code, the following nominal primary occupations (NAICS codes) are used for grouping and counting purposes: 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). As noted in note 73, these NAICS codes are not the basis for hourly wage rate information used in this paragraph.

⁷⁰ The estimate of affected attorneys is calculated as ten percent of the total SUB population of Offices of Lawyers. This estimate is based on the average from FinCEN analysis of U.S. legal bar association membership, performed primarily at the State level, identifying the proportion of (state) bar members that are members of the organization's (state's) real estate bar association. FinCEN considers this proxy more likely to overestimate than underestimate the number of potentially affected attorneys because, while not all members of a real estate bar association actively facilitate real estate transfers each year, it was considered less likely that an attorney would, in a given year, facilitate real estate transfers in a way that would make them a candidate reporting person for purposes of the proposed rule when such an attorney had not previously indicated an interest in real estate specific practice (by electing to join a real estate bar).

⁷¹ NAICS Code 531210 (Offices of Real Estate Agents and Brokers).

following fully loaded⁷² average⁷³ hourly wages⁷⁴ by the respective primary occupation categories: settlement agents, \$79.35; title insurers,

\$106.49; real estate escrow agencies, \$81.74; attorneys, \$153.48; and other real estate professionals, \$81.74. For reference, these wages estimates

represent the following updates from the NPRM RIA:

TABLE 1—WAGE ESTIMATE REVISIONS FROM NPRM TO FINAL RULE RIA

Primary business categories	Fully loaded hourly wage (NPRM)	Fully loaded hourly wage (final)
Title Abstract and Settlement Offices	\$70.33	\$79.35
Direct Title Insurance Carriers	84.15	106.49
Other Activities Related to Real Estate	70.46	81.74
Offices of Lawyers	88.89	153.48
Offices of Real Estate Agents and Brokers	70.46	81.74

c. Market Baseline

i. Reportable Transfers

The scope of residential real estate transfers that would be affected by the rule is jointly defined by the (1) the nature of the property transferred, (2) the financed nature of the transfer, and (3) the legal organization of the party to whom the property is transferred. For purposes of identification, the defining attribute for the nature of the property is that it is principally designed, or intended to become, the residence of one to four families, including cooperatives and vacant or unimproved land. Additionally, the property must be located in the United States as defined in the BSA implementing regulations.

Reportable transfers exclude all those in which the transferees receive an extension of credit from a financial institution subject to AML/CFT program and SAR Reporting requirements that is secured by the residential real property being transferred. Reportable transfers also exclude transfers associated with an easement, death, divorce, or bankruptcy or that are otherwise supervised by a court in the United States, as well as certain no consideration transfers to trusts, certain transfers related to 1031 Exchanges, and any transfer for which there is no reporting person.

On the basis of available data, studies, and qualitative evidence, subject to certain qualifying caveats about limitations in data availability, and in the absence of large, unforeseeable shocks to the U.S. residential housing

market, FinCEN's NPRM analysis estimated that the number of reportable transfers would be between approximately 800,000 and 850,000 annually. FinCEN received a number of comment letters suggesting that this estimate is too low. However, because most arguments of this nature were made on the basis of an understanding that the rule would include several kinds of transfers that have since been explicitly excepted in the final rule, FinCEN is not increasing its estimates.

ii. Current Market Characteristics

FinCEN took certain potentially informative aspects of the current market for residential real property into consideration when forming its expectations about the anticipated economic impact of the rule. Among other things, FinCEN considered trends in the observable rate of turnover in the stock of existing homes. Additionally, FinCEN reviewed recent studies and data from the academic literature estimating housing supply elasticities on previously developed versus newly developed land.

FinCEN also considered recent survey results of the residential real estate holdings of high-net-worth individuals and the proportion of survey respondents who self-reported the intent to purchase additional residential real estate in the coming year. Further, FinCEN reviewed studies of trends in the financing and certain distributional characteristics of shared equity housing, which includes co-operatives that will be affected by the rule.

iii. Current Market Practices

Settlement and Closing

FinCEN assessed the role of various persons in the real estate settlement and closing process to determine a quantifiable estimate of each profession or industry's overall participation in that process. Accordingly, FinCEN conducted research based on publicly available sources to assess the general participation rate of the different types of reporting persons in the rule's reporting cascade. As part of its analysis, FinCEN noted a recent blog post citing data from the American Land Title Association (ALTA) that 80 percent of homeowners purchase title insurance when buying a home.⁷⁵

To better understand the distribution of the other types of persons providing residential real property transfer services to the transfers that are affected by the rule, FinCEN utilized county deed database records to approximate a randomly selected and representative sample of residential real estate transfers across the United States. FinCEN made efforts to collect deed data that reflected a representative, nation-wide sample, both in terms of the number and geographic dispersion of deeds, but acknowledges selection was nevertheless constrained in part by the feasibility to search by deed type, among other factors. FinCEN invited public feedback on the extent to which the same analysis would yield substantively different results if performed over a larger sample (with either more geographic locations, more

⁷² Fully loaded wages are scaled by a benefits factor. The ratio between benefits and wages for private industry workers is (hourly benefits (11.86))/(hourly wages (28.37)) = 0.42, as of December 2023. The benefit factor is 1 plus the benefit/wages ratio, or 1.42. See U.S. Bureau of Labor Statistics, "Employer Costs for Employee Compensation Historical Listing," available at <https://www.bls.gov/web/ecec/ececcqrtn.pdf>. The private industry workers series data for December 2023 is available at <https://www.bls.gov/web/ecec/ececcqrtn.pdf>.

⁷³ Because available wage estimates are not available for each SUBS category at the 6-digit NAICS level, FinCEN has estimated average wages over the collection of occupational subcategories likely to be affected for each corresponding category at the next most granular NAICS-level available.

⁷⁴ Wage estimates presented here, and used throughout the subsequent analysis, reflect two forms of updating from the NPRM: (1) wage data has been updated to reflect the BLS publication of the May 2023 National Occupational Employment and Wage Estimates in April 2024, (2) responsive

to public comments that the previous wage estimates (based on national mean wages) might contribute to an underestimate of time cost burdens, FinCEN is electing to conservatively adopt 90th-percentile values of occupational wages in place of mean hourly wage.

⁷⁵ See American Land Title Association, Home Closing 101, "Why 20% of Homeowners May Not Sleep Tonight," (June 3, 2020), available at <https://www.homeclosing101.org/why-20-percent-of-homeowners-may-not-sleep-tonight/>.

observations per location, or both), but did not receive any responsive data or the results of analysis based on such data.

The final analysis included 100 deeds, of which 97 involved at least one of the following potential reporting persons: (i) Title Abstract and Settlement Offices, (ii) Direct Title Insurance Carriers, or (iii) Offices of Lawyers. A candidate reporting person was deemed to be involved with the creation of the deed if either (i) a company or firm performing one of these functions was included on the deed or (ii) an individual performing or employed by a company or firm performing one of these functions was included on the deed. FinCEN assessed the distribution of alternative entities identified on the remaining deeds, categorizing by reporting person type. Based on this qualitative analysis, FinCEN tentatively anticipates that approximately three percent of reportable transfers might have a reporting person or reporting cascade that begins with someone other than a settlement agent, title insurer, or attorney.

Records Search

Currently, law enforcement searches a variety of State and commercial databases (that may or may not include beneficial ownership information), individual county record offices, and/or use subpoena authority to trace the suspected use of criminal proceeds in the non-financed transfer of residential real estate. Even after a significant investment of resources, the identities of the beneficial owners may not be readily ascertainable. This fragmented and limited approach can slow down and decrease the overall efficacy of investigations into money laundering through real estate. This was one reason that FinCEN introduced the Residential Real Estate GTOs, which law enforcement has reported have significantly expanded their ability to investigate this money laundering typology. At the same time, the Residential Real Estate GTOs have certain restrictions that limited its usefulness nationwide. This rule builds on and is intended to replace the Residential Real Estate GTO framework and creates reporting and recordkeeping requirements for specific residential real estate transfers nationwide.

3. Description of Final Rule Requirements

a. Reportable Transfers

The final rule requires certain persons involved in real estate closings and

settlements to submit reports and keep records on identified non-financed transfers of residential real property to specified legal entities and trusts on a nationwide basis. The rule does not require transfers to be reported if the transfer is financed, meaning that the transfer involves an extension of credit to all transferees that is secured by the transferred residential real property and is extended by a financial institution that has both an obligation to maintain an AML program and an obligation to report suspicious transactions under this chapter. It also does not require reporting of: (i) a grant, transfer, or revocation of an easement; (ii) a transfer resulting from the death of an owner of residential real property; (iii) a transfer incident to divorce or dissolution of a marriage or civil union; (iv) a transfer to a bankruptcy estate; (v) a transfer supervised by a court in the United States; (vi) a transfer for no consideration made by an individual, either alone or with the individual's spouse, to a trust of which that individual, that individual's spouse, or both of them, are the settlor(s) or grantor(s); (vii) a transfer to a qualified intermediary for purposes of a 1031 Exchange; or (viii) a transfer that does not involve a reporting person. A report would also not need to be filed if the transferee is an exempt legal entity or trust, which are generally highly-regulated.

b. Reporting Persons

The final rule requires a reporting person, as determined by either the reporting cascade or as pursuant to a designation agreement, to complete and electronically file a Real Estate Report. The reporting person may generally obtain, and reasonably rely upon, information needed to complete the Real Estate Report from any other person. This reasonable reliance standard is more limited for purposes of obtaining the transferee's beneficial ownership information. In those situations, the reasonable reliance standard applies only to information provided by the transferee or the transferee's representative and only if the person providing the information certifies the accuracy of the information in writing to the best of their knowledge. The reporting person must file the report by the final day of the following month after which a closing took place, or 30 days after the date of the closing, whichever is later.

c. Required Information

The final rule requires the reporting person to report to FinCEN certain information about a reportable transfer

of residential real property. This includes information on the reporting person, the transferee and its beneficial owners, the transferor, the property being transferred, and certain payment information. The collected information will be maintained by FinCEN in an existing database accessible to authorized users. Some commenters' remarks suggest that certain expectations of the rule's potential effects may flow from a misunderstanding about who may access Real Estate Report data once filed and how it may be used. FinCEN is therefore reiterating that both access and use of Real Estate Report data will be subject to the same restrictions as other BSA reports, including traditional SARs.

4. Expected Economic Effects

This section describes the main, quantifiable economic effects FinCEN anticipates the various affected parties identified above may experience. Because the primary expected value of the rule is in the extent to which it is able to address or ameliorate the economic problems discussed under the RIA's broad economic considerations, which (while substantial) is generally inestimable, no attempt is made to quantify the net benefit of the rule. Instead, the remainder of this section focuses primarily on the estimates of reasonably anticipated, calculable costs to affected parties. While FinCEN continues to principally anticipate aggregate cost estimates between approximately \$267.3 million and \$476.2 million in the first compliance year and current dollar value of the aggregate costs in subsequent years between approximately \$245.0 million and \$453.9 million annually, it has provided revised estimates throughout the remaining analysis, responsive to public comments, that reflect more conservative expectations about the cost of labor. Under these assumptions, the anticipated costs of the rule would be between approximately \$428.4 and \$690.4 million (midpoint \$559.4 million) in the first compliance year and between approximately \$401.2 and \$663.2 million (midpoint \$532.2 million) (current dollar value) in subsequent years. These quantified costs are a pro forma accounting cost estimate only and are not expected to represent either the full economic costs of the rule nor the net cost of the rule as measured against the components of expected benefits that may become quantifiable. As previously stated, the ability to successfully detect, prosecute, and deter crimes—or other illicit activities that rely on money laundering to be

profitable—is not readily translatable to dollar figures.⁷⁶ However, it might be inferred that a tacit expectation underlying this rulemaking is that the rule will generate intangible benefits worth over \$500 million per year.⁷⁷

a. Costs to Entities in the Reporting Cascade

i. Training

To estimate expected training costs, FinCEN adopted a parsimonious model similar, in certain respects, to the methodology used by FinCEN when publishing the RIA for the 2016 CDD Rule (CDD Rule RIA). Taking into consideration, however, that, unlike covered financial institutions under the CDD Rule, only one group of affected

reporting persons has direct pre-existing experience with other FinCEN reporting and compliance requirements, the estimates of anticipated training time here are revised upward from the CDD Rule RIA to 75 minutes for initial training and 30 minutes for annual refresher training. FinCEN's method of estimation assumes that an employee who has received initial training once will then subsequently take the annual refresher training each following year. This assumption contemplates that more than half of the original training would not be firm-specific and remains useful to the employee regardless of whether they remain with their initial employer or change jobs within the same industry. As in the CDD Rule RIA

high estimate model, FinCEN estimates that two-thirds of untrained employees receive the initial (lengthier) training each year. However, because the initial training is assumed to provide transferrable human capital in this setting, turnover is not relevant to the assignment to initial training in periods following Year 1. Thus, in the revised model, FinCEN calculated annual training costs as the combination of the expected costs of providing two-thirds of the previously untrained workforce per industry with initial (lengthier) training and all previously trained employees with the refresher (shorter) training. Time costs are proxied by an industry-specific fully loaded wage rate at the 90th percentile per industry.

TABLE 2—TRAINING COSTS

Estimated per person training costs		Initial training		Refresher (year 2+)	
Primary business categories	Fully loaded hourly wage	Time (hours)	Total	Time (hours)	Total (unadjusted)
Title Abstract and Settlement Offices	\$79.35	1.25	\$99.18	0.5	\$39.67
Direct Title Insurance Carriers	106.49	1.25	133.11	0.5	53.24
Other Activities Related to Real Estate	81.74	1.25	102.17	0.5	40.87
Offices of Lawyers	153.84	1.25	192.30	0.5	76.92
Offices of Real Estate Agents and Brokers	81.74	1.25	102.17	0.5	40.87

To model industry-specific hiring inflows in periods following Year 1, FinCEN converted the Bureau of Labor Statistics (BLS) projected 10-year cumulative employment growth rates for 2022–2032 for the NAICS code mostly closely associated with a given industry available. Additionally, inflation data from the Federal Reserve Bank of St. Louis was utilized to estimate annual wage growth given the opportunity cost of training is assumed to be equivalent to the wage of employees. Utilizing these inputs, and summing costs across all industries expected to be affected, FinCEN estimates that the aggregate initial year training costs would be approximately \$51.0 million dollars and the undiscounted aggregate training costs in each of the subsequent years would range between approximately \$23.2 and \$31.5 million.

FinCEN notes that fewer than five percent of unique comments received made specific reference to the training costs that the rule would necessitate and fewer still provided comments

pertaining to the RIA estimates of training costs. While one commenter suggested that the uniformity of the rule would reduce the burden of preparing training materials relative to the current variety of Residential Real Estate GTO thresholds and applications, the majority of training cost-related comments simply noted that training costs would impose a burden and might separately lead to higher labor costs if new personnel require compensation for additional reporting compliance related subject-matter expertise. There were, however, some commenters who expressed a belief that the amount of time needed for—and frequency of—training needed to adequately prepare staff for compliance would be higher. While FinCEN is declining to responsively adjust its estimates of training-related time costs for reasons, among others, that are further discussed below, FinCEN is responsive to certain other commenters who expressed a perceived value to having a greater range of potential burden estimates to compare: had FinCEN adopted the

suggested alternative training time costs, the aggregate annual training burden would have been either \$81.5 million in year 1⁷⁸ or \$101.9 million⁷⁹ in year 1, or between \$63.5 and \$130.8 million in a given year.⁸⁰

In its NPRM analysis, FinCEN recognized that the rule would impose certain costs on businesses positioned to provide services to non-financed transfers of residential real property even in the absence of direct participation in a specific reportable transfer, including the costs of preparing informational material and training personnel about the proposed rule generally as well as certain firm-specific policies and procedures related to reporting, complying, and documenting compliance. Because this training burden was applied uniformly across all potentially affected occupational categories represented in the reporting cascade, which is already a conservative assumption given that some cascade tiers are, in practice, more likely to become the reporting person than others, FinCEN considered time burden

⁷⁶ See FinCEN, NPRM, “Anti-Money Laundering Regulations for Residential Real Estate Transfers,” 89 FR 12424, 12446–12447 (Feb. 16, 2024).

⁷⁷ Based on the observation that the midpoint values of first year (\$559.4 million), subsequent year (\$532.2 million), and the midpoint of the midpoint values between first and subsequent years (\$545.8 million) are all approximately \$500 million.

See also *infra* Section VI.B for a discussion of annualized cost.

⁷⁸ Based on a comment that the initial training should be 120 minutes (2 hours).

⁷⁹ Based on a comment that the initial training should be double what FinCEN estimated (150 minutes, or 2.5 hours).

⁸⁰ Based on a comment that training would take 60 minutes (1 hour) per transfer, where FinCEN applies the lowest wage rate to the lower bound estimate of total annual reportable transfers to obtain the lower bound and applies the highest wage rate to the upper bound estimate of total annual reportable transfers to obtain the upper bound.

values (75 minutes for initial, 30 minutes for refresher) that would average across the expected variation in training by occupational category a reasonable approach. Furthermore, these training costs, as estimated in the NPRM, pertain only to those contemplated activities identified (developing general understanding of the rule and firm-specific compliance policies and procedures) and were not intended to reflect additional reporting-technology and form-specific training costs. Costs of training that are specific to the Real Estate Report will be separately estimated as a function of the RIA in the NPRM for the Real Estate Report; therefore, it would not have been appropriate to have included those training costs in the current final rule estimates as that would result in accounting for the same expense twice.

ii. Reporting

The total costs associated with reporting a given reportable transfer will likely vary with the specific facts and circumstances of the transfer. For

instance, the cost of the time needed to prepare and file a report could differ depending on which party in the cascade is the reporting person, because parties receive different compensating wages. The costs associated with the time to determine who is the reporting person will also vary by the number of potential parties who may assume the role and thus might be parties to a designation agreement. Additionally, the time required to prepare a report will likely vary with the complexity of the beneficial ownership of the transferee and, for example, the level of the transferee entity's preexisting familiarity with the concepts of beneficial ownership information as defined for FinCEN purposes.

FinCEN continues to estimate an average per-party cost to determine the reporting person of 30 (15) minutes for the party that assumes the role if a designation agreement is (not) required and 15 minutes each for all non-reporting parties (assuming each tier in the cascade corresponds to one reporting person). Therefore, the range

of potential time costs associated with determining the reporting person is expected to be between 15 to 90 minutes. Recently, FinCEN received updated information from parties currently reporting under the Residential Real Estate GTOs indicating that the previously estimated time cost of 20 minutes for that reporting requirement was less than half the average time expended per report in practice. Based on this feedback, the filing time burden FinCEN anticipates for the rule accordingly incorporates a 45-minute estimate for the collection and reporting of the subset of Real Estate Report required information that is similar to information in reports filed under the Residential Real Estate GTOs, although FinCEN recognizes that certain transfers may require significantly more time. Mindful of these outliers, FinCEN estimates an average 2 hour per reportable transfer time cost to collect and review transferee and transfer-specific reportable information and related documents, and an average 30 minute additional time cost to reporting.

TABLE 3—REPORTING COSTS

Estimated per transaction reporting costs		Non-reporting party		Reporting party			
Primary business categories	Fully loaded hourly wage	Designation		Designation-related		Designation-independent	
		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

Based on the range of expected reportable transfers and the wages associated with different persons in the potential reporting cascade, FinCEN anticipates that the rule's reporting costs may be between approximately \$174.6 million and \$466.5 million.

In its original NPRM analysis, FinCEN stated an expectation that reporting persons would generally be able to rely on technology previously purchased and already deployed in the ordinary course of business (namely, computers and access to the internet) to comply with the proposed reporting requirements, and therefore no line item of incremental expected IT costs was ascribed to reporting. Certain commenters expressed that this expectation would be unrealistic because their current business practices rely on software for tracking and internal controls processes, for example, that would need to be updated in light of the rule's reporting requirements. However, FinCEN did not receive any

comments that would enable it to quantify the expected burden associated with these software upgrades that commenters described. In the absence of readily generalizable cost estimates, it is therefore not feasible to update reporting costs responsively, though FinCEN acknowledges that, as a consequence, its aggregate burden estimates can, at best, function as a lower-bound expectation of the total costs of the rule.

iii. Recordkeeping

FinCEN continues to expect that the rule would impose recordkeeping requirements on reporting persons as well as, in certain cases, members of a given reportable transfer's cascade that are not the reporting person. The primary variation in expected recordkeeping costs would flow from the conditions under which the reporting person has assumed their role. Additional variation in costs may result from differences in the dollar value

assigned to the reporting person's time costs as a function of their primary occupation.

If the reporting person assumes that role as a function of their position in the reporting cascade, this would imply that no meaningfully distinct person involved in the transfer provided the preceding service(s). In this case, the reporting person's recordkeeping requirements would be limited to the retention of compliance documents (*i.e.*, a copy of the transferee's certification of beneficial ownership information) for a period of five years in a manner that preserves ready availability for inspection as authorized by law. Recordkeeping costs would therefore include those associated with creating and/or collecting the necessary documents, storing the records in an accessible format, and securely disposing of the records after the required retention period has elapsed. FinCEN anticipates that over the full recordkeeping lifecycle, each reportable

transfer would, on average, require one hour of the reporting person's time, as well as a record processing and maintenance cost of ten cents. Because FinCEN expects that records will

primarily be produced and recorded electronically and estimates its own processing and maintenance costs at ten cents per record, it has applied the same expected cost per reportable transfer to

reporting persons. In aggregate, this would result in recordkeeping costs between approximately \$63.6 million and \$130.8 million associated with one year's reportable transfers.

TABLE 4—ESTIMATED RECORDKEEPING COSTS

Estimated per transaction recordkeeping costs		Non-reporting party		Reporting party			
Primary business categories	Fully loaded hourly wage	Designation-related		Designation-related		Designation-independent	
		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).

If the reporting person has instead assumed that role as the result of a designation agreement, the rule would impose additional recordkeeping requirements on both the reporting person and at least one other member of the reporting cascade. This is because the existence of a designation agreement implies the existence of one or more distinct alternative parties to the reportable transfer that provided a preceding service or services as described in the cascade. While the final rule only stipulates that “all parties to a designation agreement” would also be anticipated to incur recordkeeping costs, FinCEN expects the minimum number of additional parties required to retain a readily accessible copy of the designation agreement for a five-year period would, in practice, depend on the number of alternative reporting parties servicing the transfer in a capacity that precedes the designated reporting person in the cascade, as it would otherwise be difficult to demonstrate the prerequisite sequence of conditions were met to establish the “but for” of the requirement. Conservatively assuming that each service in the cascade is provided by a separate party, this would impose an incremental recordkeeping cost on at least two parties per transfer and at most five. Because FinCEN estimates of reporting costs already assign the costs of preparing a designation agreement to the reporting person (when a transfer includes a designation agreement), the incremental recordkeeping costs it estimates here pertain solely to the electronic dissemination, signing, and storage of the agreement. This is assigned an average time cost of five minutes per signing party to read and sign the designation agreement, as well as a ten-cent record processing and maintenance cost per transfer. Thus, designation agreement-specific

recordkeeping costs are expected to include a time cost of 10–50 minutes (assuming one party signing per tier of the cascade) and \$0.20–\$0.50 per reportable transfer that involves a designation. This corresponds to expected annual aggregate costs ranging from approximately \$10.9 million to \$36.1 million. FinCEN notes that it assumes that rational parties to a reportable transfer would not enter into a designation agreement if the expected cost of doing so, including compliance with the recordkeeping requirements, were not elsewhere compensated in the form of efficiency gains or other offsetting cost savings associated with other components of compliance with the rule, such as training or reporting costs. As such, the estimates provided here should only be taken to reflect a pro forma accounting cost.

iv. Other Costs

Several commenters expressed concern that in addition to the technological costs associated with new or upgraded software, they would face certain non-monetary costs in the form of increased technology and cybersecurity related risk. Because FinCEN is not requiring reporting persons to retain copies of filed Real Estate Reports, it is not clear how the incremental data that would be retained (*i.e.*, a copy of the beneficial ownership information certification and, if one exists, a copy of the designation agreement) could be meaningfully distinguished from other records a reporting person might retain in connection with the same reportable transfer for purposes of estimating a standalone burden of increased risk.

b. Government Costs

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,⁸¹ stakeholder outreach and informational support, compliance monitoring, and potential enforcement activities, as well as certain incremental increases to pre-existing administrative and logistical expenses.

While such operating costs are not typically considered part of the general economic cost of a rule, FinCEN acknowledges that this treatment implicitly assumes that resources commensurate with the novel operating costs exist. If this assumption does not hold, then operating costs associated with a rule may impose certain economic costs on the public in the form of opportunity costs from the agency's forgone alternative activities and those activities' attendant benefits. Putting that into the context of this rule, and benchmarking against FinCEN's actual appropriated budget for fiscal year 2023 (\$190.2 million),⁸² the corresponding opportunity cost would resemble forgoing approximately 4.5 percent of current activities annually.

5. Economic Consideration of Policy Alternatives

In the NPRM, FinCEN analyzed the expected impact of three policy alternatives to the proposed rule and invited public comment regarding the

⁸¹ 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 Real Estate Report.

⁸² FinCEN, “Congressional Budget Justification and Annual Performance Plan and Report FY 2024” (2023), available at <https://home.treasury.gov/system/files/266/15.-FinCEN-FY-2024-CJ.pdf>.

viability and preferability of these alternatives.

First, instead of the designation option included in the proposed rule, FinCEN could have required the reporting person to be determined strictly by the reporting cascade, leaving it to the parties to a covered transfer to determine which service provider would meet the highest tier of the cascade and consequently be required to report without any option to select whichever party in the reporting cascade is best-positioned to file the report. FinCEN expects that rational parties would prefer to assign the reporting obligation to the party who can complete the report most cost-effectively. An alternative reporting structure that does not allow the parties to designate a reporting person responsible for the report would therefore be less cost-effective than the approach proposed in the NPRM, unless the reporting cascade would always assign the reporting requirement to the party with the lowest associated compliance costs. Because FinCEN expects that parties to the covered transfer may be better situated to determine which party can complete the required report in the most cost-effective manner, FinCEN declined to propose a standalone reporting cascade. FinCEN did not receive any comments indicating that it was mistaken in its assumptions, nor did it receive any comments indicating a preference for the designation option to be removed.

As a second alternative, FinCEN could have proposed to impose the full traditional SAR filing obligations and AML/CFT program requirements on the various real estate professionals included in the proposed reporting cascade instead of the narrower requirement that only one participant party would be required to file a Real Estate Report. While imposing full AML/CFT program requirements on all real estate professionals would have almost certainly served to mitigate the illicit finance risks in the residential real estate sector, FinCEN considered that the costs accompanying this alternative would be commensurately more significant and would likely disproportionately burden small businesses. Such weighting of costs towards smaller entities was expected to increase transaction costs associated with residential real property transfers both directly via program-related operational costs and indirectly via the potential anticompetitive effects of program costs and was therefore considered a less viable alternative than the streamlined reporting obligation proposed. FinCEN did not receive any

comments indicating that it was mistaken in its expectations about the economic impact of this alternative or its lesser desirability.

Finally, as a third alternative, FinCEN could have required the reporting person to certify the transferee's beneficial ownership information instead of allowing them to rely upon the transferee entity or trust to certify to the reporting person that the beneficial ownership information they have provided is accurate to the best of their knowledge. FinCEN anticipated that this alternative would likely be accompanied by a number of increased costs, including a potential need for longer, more detailed compliance training; lengthier time necessary to collect and review documents supporting the reported transferee beneficial ownership information required; and increased recordkeeping costs. FinCEN also considered that there might also be costs associated with transfers that would not occur if, for example, a reporting person was unwilling or unable to certify the transferee's information. Furthermore, FinCEN was concerned about the potential anticompetitive effects that might arise if certain reporting persons are better positioned to absorb the risks associated with certifying transferee beneficial ownership information, as it was foreseeable that smaller businesses could be at a disadvantage. FinCEN did not receive any comments indicating that it was mistaken in its expectations about the economic impact of this alternative or comments from potentially affected transferees that they would prefer the reporting person to provide certification instead.

B. EOs 12866, 13563, and 14094

E.O. 12866 and its amendments direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects; distributive impacts; and equity).⁸³ E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. E.O. 13563 also recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss

qualitatively values that are difficult or impossible to quantify.⁸⁴

Because annual residential real estate transaction volume can vary significantly from year to year and is sensitive to a host of macroeconomic factors (some of which cannot easily be modeled with reasonable accuracy), estimates that rely on average values of current data projected over extended periods of time into the future may be of limited informational value. Nevertheless, FinCEN has prepared certain annualized cost estimates as recommended in OMB circular A-4.⁸⁵ Using the midpoint of the estimated range of expected costs in year one of compliance⁸⁶ and in subsequent years,⁸⁷ FinCEN estimates that the net present value of costs associated with a five-year time horizon is \$2.21 billion (\$2.46 billion) using a 7 percent (3 percent) discount rate, respectively. This equates to annualized costs of \$538.4 million (\$538.0 million) using the same discount rates.

This rule has been designated a "significant regulatory action;" accordingly, it has been reviewed by the Office of Management and Budget (OMB).

C. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the RFA⁸⁸ requires the agency either to provide an initial regulatory flexibility analysis (IRFA) with a proposed rule or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. In its NPRM, FinCEN asserted that, although the rule might apply to a substantial number of small entities,⁸⁹ it

⁸⁴ E.O. 13563, 76 FR 3821 (Jan. 21, 2011), § 1(c) ("Where appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity . . . and distributive impacts.")

⁸⁵ See Office of Management and Budget, "Circular A-4—Subject: Regulatory Analysis," (Sept. 17, 2003), available at https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/.

⁸⁶ The midpoint value of estimated first year costs is \$559.4 million; see *supra* note 76.

⁸⁷ The midpoint value of estimated subsequent year costs is \$532.2 million; see *supra* note 76.

⁸⁸ 5 U.S.C. 601 *et seq.*

⁸⁹ See FinCEN, NPRM, "Anti-Money Laundering Regulations for Residential Real Estate Transfers," 89 FR 12424, 12458 (Feb. 16, 2024) (finding that "an upper bound of potentially affected small entities includes approximately 160,800 firms (by the following primary business classifications: approximately 6,300 Title and Settlement Agents, 800 Direct Title Insurance Carriers, 18,000 persons performing Other Activities Related to Real Estate, 15,700 Offices of Lawyers, and 120,000 Offices of Real Estate Agents and Brokers)," though "the point estimates differ non-trivially by how 'small' is operationally defined, and do not do so

⁸³ E.O. 14094 sets the threshold that triggers regulatory impact analytical requirements at \$200 million in expected annual burden.

was not expected to have a significant economic impact on a substantial number of them.⁹⁰ The preliminary basis for this expectation, at that stage, included FinCEN's attempts to minimize the burden on reporting persons by streamlining the reporting requirements and providing for an option to designate the reporting obligation. Accordingly, FinCEN certified that the proposed rule would not have a significant economic impact on a substantial number of small entities.⁹¹

Having considered the various possible outcomes for small entities under the reporting requirements at the proposal stage⁹² and having taken the public comments received in response to the NPRM into consideration, FinCEN continues to believe that the rule will not have a significant economic impact on a substantial number of small entities,⁹³ and therefore that certification remains appropriate and a Final Regulatory Flexibility Analysis (FRFA) is not required. Changes made from the NPRM to the final rule reinforce this conclusion. The final rule contains additional exceptions for low-risk transfers and otherwise clarifies the scope of transactions to which the rule will apply, and also adopts a reasonable reliance standard with respect to information provided to reporting persons. As a result, FinCEN expects that the final rule will result in a more narrowly scoped burden in general than the proposed rule that was certified at the NPRM stage.⁹⁴ FinCEN

unidirectionally across methodologies and data sources").

⁹⁰ *Id.* at 12452.

⁹¹ See U.S. Small Business Administration, "How to Comply with the Regulatory Flexibility Act," p.44, n.144 (Aug. 2017), available at <https://advocacy.sba.gov/wp-content/uploads/2019/07/How-to-Comply-with-the-RFA-WEB.pdf> (stating that "The Office of Advocacy believes that, given the emphasis in the law on public notice, the certification should also appear in the final rule even though there may have already been a certification in the proposed rule. Doing so will help demonstrate the continued validity of the certification after receipt of public comments").

⁹² When certifying at the NPRM stage, FinCEN discussed the basis on which its expectations were formed by considering the spectrum of potential burdens and costs a small business might incur as a result of the rule. This included considering the outcomes on businesses that would either incur no change in burden, a partial increase in burden, or the full increase in burden contemplated by the rule. In this analysis, FinCEN estimated that the incremental burden of complying with the rule would equate to an approximately 0%, 0.2%, or 0.5% increase in the average annual payroll expense of one employee, respectively, and was therefore unlikely to be significant.

⁹³ See *supra* note 91.

⁹⁴ While FinCEN has raised its estimate of the maximum anticipated cost per transaction (from \$363.17 to \$628.39 for reporting persons and from an aggregate of \$103.43 to \$116.84 for the

expects that small entities affected by the final rule would experience a proportionate share of this reduction in burden when compared to the proposed rule, resulting in a more limited burden for small entities under the final rule when compared to the proposed rule, noting again that the proposed rule was itself certified as not having a significant economic impact on a substantial number of small entities.

Nevertheless, while further steps to accommodate or discuss small entity concerns may not be a strict requirement, FinCEN is mindful of the small-business-oriented views and concerns voiced during the public comment period and has not precluded taking additional steps, as feasible, to facilitate implementation of the final rule in a manner that minimizes the perceived or realized competitive disadvantages a small business or other affected small entity may face. This includes, but may not be limited to, targeted outreach and production of training materials such as FAQs or a Small Entity Compliance Guide, in addition to the more broadly available support services as previously discussed in Section III.A and Section VI.A.iv.b.

Certification

Having considered the various possible outcomes for small entities under the reporting requirements at the proposal stage and having taken the public comments received in response to the NPRM into consideration for the final rule, FinCEN continues to certify that the rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Section 202 of the UMRA⁹⁵ requires that an agency prepare a statement before promulgating a rule that may result in expenditure by state, local, and Tribal governments, or the private sector, in the aggregate, of \$184 million or more in any one year.⁹⁶ Section 202 of the UMRA also requires an agency to identify and consider a reasonable

maximally inclusive number of non-reporting persons per transfer), the number of transactions to which the burden would apply (and could thereby become a transfer a small business would be required to report should it not enter into a designation agreement) is reduced.

⁹⁵ See 2 U.S.C. 1532(a).

⁹⁶ The U.S. Bureau of Economic Analysis reported the annual value of the gross domestic product (GDP) deflator in 1995 (the year in which UMRA was enacted) as 66.939; and in 2023 as 123.273. See U.S. Bureau of Economic Analysis, "Table 1.1.9. Implicit Price Deflators for Gross Domestic Product" (accessed June 5, 2024). Thus, the inflation adjusted estimate for \$100 million is 123.273 divided by 66.939 and then multiplied by 100, or \$184.157 million.

number of regulatory alternatives before promulgating a rule. FinCEN believes that the preceding assessment of impact⁹⁷ satisfies the UMRA's analytical requirements.

E. Paperwork Reduction Act

The new information collection requirements contained in this rule (31 CFR 1031.320) have been approved by OMB in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, under control number 1506-0080. The PRA imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The rule includes three information collection requirements: Real Estate Reports, which will be submitted to FinCEN, and, depending on the circumstances of the transfer, a designation agreement and/or a certification form for beneficial ownership information, neither of which will be submitted to FinCEN but which must be retained for five years.

Reporting and Recordkeeping Requirements: The provisions in this rule pertaining to the collection of information can be found in paragraph (a) of 31 CFR 1031.320. The information required to be reported by the rule will be used by the U.S. Government to monitor and investigate money laundering in the U.S. residential real estate sector. The information required to be maintained will be used by Federal agencies to verify compliance by reporting persons with the provisions of the rule. The collection of information is mandatory.

OMB Control Number: 1506-0080

Frequency: As required

Description of Affected Public:

Residential Real Estate Settlement Agents, Title Insurance Carriers, Escrow Service Providers, Other Real Estate Professionals

Estimated Number of Responses: 850,000⁹⁸

Estimated Total Annual Reporting and Recordkeeping Burden: 4,604,167 burden hours⁹⁹

⁹⁷ See generally Section VI.A.

⁹⁸ This estimate represents the upper bound estimate of reportable transfers per year as described in greater detail above in Section VI.A.2.

⁹⁹ This estimate includes the upper bound estimates of the time burden of compliance, as described in greater detail above, with the reporting and recordkeeping requirements. See Section VI.A.4.ii and Section VI.A.4.iii.

Estimated Total Annual Reporting and Recordkeeping Cost:
\$630,976,662.47¹⁰⁰

F. Congressional Review Act

OMB's Office of Information and Regulatory Affairs has designated this rule as meeting the criteria under 5 U.S.C. 804(2) for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the Congressional Review Act or CRA).¹⁰¹ Under the CRA, such rules generally may take effect no earlier than 60 days after the rule is published in the **Federal Register**.¹⁰²

List of Subjects in 31 CFR Part 1031

Administrative practice and procedure, Aliens, Authority delegations (Government agencies), Bankruptcy, Banks and banking, Brokers, Buildings and facilities, Business and industry, Condominiums, Cooperatives, Courts, Currency, Citizenship and naturalization, Crime, Electronic filing, Estates, Fair housing, Federal home loan banks, Federal savings associations, Federal-States relations, Foreign investments in U.S., Foreign persons, Foundations, Holding companies, Home improvement, Homesteads, Housing, Indian—law, Indians, Indians—tribal government, Insurance companies, Investment advisers, Investment companies, Investigations, Lawyers, Legal services, Law enforcement, Low and moderate income housing, Money laundering, Mortgage insurances, Mortgages, Penalties, Privacy, Real property acquisition, Record retention, Reporting and recordkeeping requirements, Small businesses, Securities, Taxes, Terrorism, Trusts and trustees, U.S. territories.

Authority and Issuance

■ For the reasons set forth in the preamble, chapter X of title 31 of the Code of Federal Regulations is amended by adding part 1031 to read as follows:

PART 1031—RULES FOR PERSONS INVOLVED IN REAL ESTATE CLOSINGS AND SETTLEMENTS

Sec.

Subparts A and B [Reserved]

Subpart C—Reports Required to be Made by Persons Involved in Real Estate Closings and Settlements

1031.320 Reports of residential real property transfers.

1031.321 [Reserved]

Authority: 12 U.S.C. 1829b, 1951–1959; 31 U.S.C. 5311–5314, 5316–5336; title III, sec. 314 Pub. L. 107–56, 115 Stat. 307; sec. 701 Pub. L. 114–74, 129 Stat. 599; sec. 6403, Pub. L. 116–283, 134 Stat. 3388.

Subparts A and B [Reserved]

Subpart C—Reports Required to be Made by Persons Involved in Real Estate Closings and Settlements

§ 1031.320 Reports of residential real property transfers.

(a) *General.* A reportable transfer as defined in paragraph (b) of this section shall be reported to FinCEN by the reporting person identified in paragraph (c) of this section. The report shall include the information described in paragraphs (d) through (i) of this section. The reporting person may reasonably rely on information collected from others under the conditions described in paragraph (j). The report required by this section shall be filed in the form and manner, and at the time, specified in paragraph (k) of this section. Records shall be retained as specified in paragraph (l) of this section. Reports required under this section and any other information that would reveal that a reportable transfer has been reported are not confidential as specified in paragraph (m) of this section. Terms not defined in this section are defined in 31 CFR 1010.100.

(b) *Reportable transfer.* (1) Except as set forth in paragraph (b)(2) of this section, a reportable transfer is a non-financed transfer to a transferee entity or transferee trust of an ownership interest in residential real property. For the purposes of this section, residential real property means:

(i) Real property located in the United States containing a structure designed principally for occupancy by one to four families;

(ii) Land located in the United States on which the transferee intends to build a structure designed principally for occupancy by one to four families;

(iii) A unit designed principally for occupancy by one to four families within a structure on land located in the United States; or

(iv) Shares in a cooperative housing corporation for which the underlying property is located in the United States.

(2) A reportable transfer does not include a:

(i) Grant, transfer, or revocation of an easement;

(ii) Transfer resulting from the death of an individual, whether pursuant to the terms of a decedent's will or the terms of a trust, the operation of law, or by contractual provision;

(iii) Transfer incident to divorce or dissolution of a marriage or civil union;

(iv) Transfer to a bankruptcy estate;

(v) Transfer supervised by a court in the United States;

(vi) Transfer for no consideration made by an individual, either alone or with the individual's spouse, to a trust of which that individual, that individual's spouse, or both of them, are the settlor(s) or grantor(s);

(vii) Transfer to a qualified intermediary for purposes of 26 CFR 1.1031(k)–1; or

(viii) Transfer for which there is no reporting person.

(c) *Determination of reporting person.*

(1) Except as set forth in paragraphs (c)(2), (3) and (4) of this section, the reporting person for a reportable transfer is the person engaged within the United States as a business in the provision of real estate closing and settlement services that is:

(i) The person listed as the closing or settlement agent on the closing or settlement statement for the transfer;

(ii) If no person described in paragraph (c)(1)(i) of this section is involved in the transfer, then the person that prepares the closing or settlement statement for the transfer;

(iii) If no person described in paragraph (c)(1)(i) or (ii) of this section is involved in the transfer, then the person that files with the recordation office the deed or other instrument that transfers ownership of the residential real property;

(iv) If no person described in paragraphs (c)(1)(i) through (iii) of this section is involved in the transfer, then the person that underwrites an owner's title insurance policy for the transferee with respect to the transferred residential real property, such as a title insurance company;

(v) If no person described in paragraphs (c)(1)(i) through (iv) of this section is involved in the transfer, then the person that disburses in any form, including from an escrow account, trust account, or lawyers' trust account, the greatest amount of funds in connection with the residential real property transfer;

(vi) If no person described in paragraphs (c)(1)(i) through (v) of this section is involved in the transfer, then the person that provides an evaluation of the status of the title; or

¹⁰⁰ This estimate includes the upper bound estimates of the wage and technology costs of compliance, as described in greater detail above, with the reporting and recordkeeping requirements. See Section VI.A.4.ii and Section VI.A.4.iii.

¹⁰¹ 5 U.S.C. 804(2) *et seq.*

¹⁰² 5 U.S.C. 801(a)(3).

(vii) If no person described in paragraphs (c)(1)(i) through (vi) of this section is involved in the transfer, then the person that prepares the deed or, if no deed is involved, any other legal instrument that transfers ownership of the residential real property, including, with respect to shares in a cooperative housing corporation, the person who prepares the stock certificate.

(2) *Employees, agents, and partners.* If an employee, agent, or partner acting within the scope of such individual's employment, agency, or partnership would be the reporting person as determined in paragraph (c)(1) of this section, then the individual's employer, principal, or partnership is deemed to be the reporting person.

(3) *Financial institutions.* A financial institution that has an obligation to maintain an anti-money laundering program under this chapter is not a reporting person for purposes of this section.

(4) *Designation agreement.* (i) The reporting person described in paragraph (c)(1) of this section may enter into an agreement with any other person described in paragraph (c)(1) of this section to designate such other person as the reporting person with respect to the reportable transfer. The person designated by such agreement shall be treated as the reporting person with respect to the transfer. If reporting persons decide to use designation agreements, a separate agreement is required for each reportable transfer.

(ii) A designation agreement shall be in writing, and shall include:

- (A) The date of the agreement;
- (B) The name and address of the transferor;
- (C) The name and address of the transferee entity or transferee trust;
- (D) Information described in in paragraph (g) identifying transferred residential real property;
- (E) The name and address of the person designated through the agreement as the reporting person with respect to the transfer; and
- (F) The name and address of all other parties to the agreement.

(d) *Information concerning the reporting person.* The reporting person shall report:

- (1) The full legal name of the reporting person;
- (2) The category of reporting person, as determined in paragraph (c) of this section; and
- (3) The street address that is the reporting person's principal place of business in the United States.

(e) *Information concerning the transferee*—(1) *Transferee entities.* For each transferee entity involved in a

reportable transfer, the reporting person shall report:

(i) The following information for the transferee entity:

- (A) Full legal name;
- (B) Trade name or “doing business as” name, if any;
- (C) Complete current address consisting of:
 - (1) The street address that is the transferee entity's principal place of business; and
 - (2) If such principal place of business is not in the United States, the street address of the primary location in the United States where the transferee entity conducts business, if any; and
- (D) Unique identifying number, if any, consisting of:

(1) The Internal Revenue Service Taxpayer Identification Number (IRS TIN) of the transferee entity;

(2) If the transferee entity has not been issued an IRS TIN, a tax identification number for the transferee entity that was issued by a foreign jurisdiction and the name of such jurisdiction; or

(3) If the transferee entity has not been issued an IRS TIN or a foreign tax identification number, an entity registration number issued by a foreign jurisdiction and the name of such jurisdiction;

(ii) The following information for each beneficial owner of the transferee entity:

- (A) Full legal name;
- (B) Date of birth;
- (C) Complete current residential street address;
- (D) Citizenship; and
- (E) Unique identifying number consisting of:

(1) An IRS TIN; or

(2) Where an IRS TIN has not been issued:

(i) A tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or

(ii) The unique identifying number and the issuing jurisdiction from a non-expired passport issued by a foreign government; and

(iii) The following information for each signing individual, if any:

- (A) Full legal name;
- (B) Date of birth;
- (C) Complete current residential street address;
- (D) Unique identifying number consisting of:

(1) An IRS TIN; or

(2) Where an IRS TIN has not been issued:

(i) A tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or

(ii) The unique identifying number and the issuing jurisdiction from a non-

expired passport issued by a foreign government to the individual;

(E) Description of the capacity in which the individual is authorized to act as the signing individual; and

(F) If the signing individual is acting in that capacity as an employee, agent, or partner, the name of the individual's employer, principal, or partnership.

(2) *Transferee trusts.* For each transferee trust in a reportable transfer, the reporting person shall report:

(i) The following information for the transferee trust:

(A) Full legal name, such as the full title of the agreement establishing the transferee trust;

(B) Date the trust instrument was executed;

(C) Unique identifying number, if any, consisting of:

(1) IRS TIN; or

(2) Where an IRS TIN has not been issued, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; and

(D) Whether the transferee trust is revocable;

(ii) The following information for each trustee that is a legal entity:

- (A) Full legal name;
- (B) Trade name or “doing business as” name, if any;
- (C) Complete current address consisting of:

(1) The street address that is the trustee's principal place of business; and

(2) If such principal place of business is not in the United States, the street address of the primary location in the United States where the trustee conducts business, if any; and

(D) Unique identifying number, if any, consisting of:

(1) The IRS TIN of the trustee;

(2) In the case that a trustee has not been issued an IRS TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or

(3) In the case that a trustee has not been issued an IRS TIN or a foreign tax identification number, an entity registration number issued by a foreign jurisdiction and the name of such jurisdiction;

(E) For purposes of this section, an individual trustee of the transferee trust is considered to be a beneficial owner of the trust. As such, information on individual trustees must be reported in accordance with the requirements set forth in paragraph (e)(2)(iii) of this section;

(iii) The following information for each beneficial owner of the transferee trust:

- (A) Full legal name;

(B) Date of birth;
(C) Complete current residential street address;

(D) Citizenship;

(E) Unique identifying number

consisting of:

(1) An IRS TIN; or

(2) Where an IRS TIN has not been issued:

(i) A tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or

(ii) The unique identifying number and the issuing jurisdiction from a non-expired passport issued by a foreign government; and

(F) The category of beneficial owner, as determined in paragraph (j)(1)(ii) of this section; and

(iv) The following information for each signing individual, if any:

(A) Full legal name;

(B) Date of birth;

(C) Complete current residential street address;

(D) Unique identifying number

consisting of:

(1) An IRS TIN; or

(2) Where an IRS TIN has not been issued:

(i) A tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or

(ii) The unique identifying number and the issuing jurisdiction from a non-expired passport issued by a foreign government to the individual;

(E) Description of the capacity in which the individual is authorized to act as the signing individual; and

(F) If the signing individual is acting in that capacity as an employee, agent, or partner, the name of the individual's employer, principal, or partnership.

(f) *Information concerning the transferor.* For each transferor involved in a reportable transfer, the reporting person shall report:

(1) The following information for a transferor who is an individual:

(i) Full legal name;

(ii) Date of birth;

(iii) Complete current residential street address; and

(iv) Unique identifying number

consisting of:

(A) An IRS TIN; or

(B) Where an IRS TIN has not been issued:

(1) A tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or

(2) The unique identifying number and the issuing jurisdiction from a non-expired passport issued by a foreign government to the individual;

(2) The following information for a transferor that is a legal entity:

(i) Full legal name;

(ii) Trade name or “doing business as” name, if any;

(iii) Complete current address

consisting of:

(A) The street address that is the legal entity's principal place of business; and

(B) If the principal place of business is not in the United States, the street address of the primary location in the United States where the legal entity conducts business, if any; and

(iv) Unique identifying number, if any, consisting of:

(A) An IRS TIN;

(B) In the case that the legal entity has not been issued an IRS TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or

(C) In the case that the legal entity has not been issued an IRS TIN or a foreign tax identification number, an entity registration number issued by a foreign jurisdiction and the name of such jurisdiction; and

(3) The following information for a transferor that is a trust:

(i) Full legal name, such as the full title of the agreement establishing the trust;

(ii) Date the trust instrument was executed;

(iii) Unique identifying number, if any, consisting of:

(A) IRS TIN; or

(B) Where an IRS TIN has not been issued, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction;

(iv) For each individual who is a trustee of the trust:

(A) Full legal name;

(B) Current residential street address; and

(C) Unique identifying number

consisting of:

(1) An IRS TIN; or

(2) Where an IRS TIN has not been issued:

(i) A tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or

(ii) The unique identifying number and the issuing jurisdiction from a non-expired passport issued by a foreign government; and

(v) For each legal entity that is a trustee of the trust:

(A) Full legal name;

(B) Trade name or “doing business as” name, if any;

(C) Complete current address

consisting of:

(1) The street address that is the legal entity's principal place of business; and

(2) If the principal place of business is not in the United States, the street address of the primary location in the United States where the legal entity conducts business, if any; and

(D) Unique identifying number, if any, consisting of:

(1) An IRS TIN;

(2) In the case that the legal entity has not been issued an IRS TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or

(3) In the case that the legal entity has not been issued an IRS TIN or a foreign tax identification number, an entity registration number issued by a foreign jurisdiction and the name of such jurisdiction.

(g) *Information concerning the residential real property.* For each residential real property that is the subject of the reportable transfer, the reporting person shall report:

(1) The street address, if any;

(2) The legal description, such as the section, lot, and block; and

(3) The date of closing.

(h) *Information concerning payments.*

(1) The reporting person shall report the following information concerning each payment, other than a payment disbursed from an escrow or trust account held by a transferee entity or transferee trust, that is made by or on behalf of the transferee entity or transferee trust regarding a reportable transfer:

(i) The amount of the payment;

(ii) The method by which the payment was made;

(iii) If the payment was paid from an account held at a financial institution, the name of the financial institution and the account number; and

(iv) The name of the payor on any wire, check, or other type of payment if the payor is not the transferee entity or transferee trust.

(2) The reporting person shall report the total consideration paid or to be paid by the transferee entity or transferee trust regarding the reportable transfer, as well as the total consideration paid by or to be paid by all transferees regarding the reportable transfer.

(i) *Information concerning hard money, private, and other similar loans.* The reporting person shall report whether the reportable transfer involved credit extended by a person that is not a financial institution with an obligation to maintain an anti-money laundering program and an obligation to report suspicious transactions under this chapter.

(j) *Reasonable reliance*—(1) *General.* Except as described in paragraph (j)(2) of this section, the reporting person may rely upon information provided by other persons, absent knowledge of facts that would reasonably call into question the

reliability of the information provided to the reporting person.

(2) *Certification when reporting beneficial ownership information.* For purposes of reporting information described in paragraphs (e)(1)(ii) and (e)(2)(iii) of this section, the reporting person may rely upon information provided by the transferee or a person representing the transferee in the reportable transfer, absent knowledge of facts that would reasonably call into question the reliability of the information provided to the reporting person, if the person providing the information certifies the accuracy of the information in writing to the best of the person's knowledge.

(k) *Filing procedures—(1) What to file.* A reportable transfer shall be reported by completing a Real Estate Report.

(2) *Where to file.* The Real Estate Report shall be filed electronically with FinCEN, as indicated in the instructions to the report.

(3) *When to file.* A reporting person is required to file a Real Estate Report by the later of either:

(i) the final day of the month following the month in which the date of closing occurred; or

(ii) 30 calendar days after the date of closing.

(l) *Retention of records.* A reporting person shall maintain a copy of any certification described in paragraph (j)(2) of this section. In addition, all parties to a designation agreement described in paragraph (c)(4) of this section shall maintain a copy of such designation agreement.

(m) *Exemptions—(1) Confidentiality.* Reporting persons, and any director, officer, employee, or agent of such persons, and Federal, State, local, or Tribal government authorities, are exempt from the confidentiality provision in 31 U.S.C. 5318(g)(2) that prohibits the disclosure to any person involved in a suspicious transaction that the transaction has been reported or any information that otherwise would reveal that the transaction has been reported.

(2) *Anti-money laundering program.* A reporting person under this section is exempt from the requirement to establish an anti-money laundering program, in accordance with 31 CFR 1010.205(b)(1)(v).

(n) *Definitions.* For purposes of this section, the following terms have the following meanings.

(1) *Beneficial owner—(i) Beneficial owners of transferee entities.* (A) The beneficial owners of a transferee entity are the individuals who would be the beneficial owners of the transferee entity on the date of closing if the transferee entity were a reporting

company under 31 CFR 1010.380(d) on the date of closing.

(B) The beneficial owners of a transferee entity that is established as a non-profit corporation or similar entity, regardless of jurisdiction of formation, are limited to individuals who exercise substantial control over the entity, as defined in 31 CFR 1010.380(d)(1) on the date of closing.

(ii) *Beneficial owners of transferee trusts.* The beneficial owners of a transferee trust are the individuals who fall into one or more of the following categories on the date of closing:

(A) A trustee of the transferee trust.

(B) An individual other than a trustee with the authority to dispose of transferee trust assets.

(C) A beneficiary who is the sole permissible recipient of income and principal from the transferee trust or who has the right to demand a distribution of, or withdraw, substantially all of the assets from the transferee trust.

(D) A grantor or settlor who has the right to revoke the transferee trust or otherwise withdraw the assets of the transferee trust.

(E) A legal entity that holds at least one of the positions in the transferee trust described in paragraphs (n)(1)(ii)(A) through (D) of this section, except when the legal entity meets the criteria set forth in paragraphs (n)(10)(ii)(A) through (P) of this section. Beneficial ownership of any such legal entity is determined under 31 CFR 1010.380(d), utilizing the criteria for beneficial owners of a reporting company.

(F) A beneficial owner of any trust that holds at least one of the positions in the transferee trust described in paragraphs (n)(1)(ii)(A) through (D) of this section, except when the trust meets the criteria set forth in paragraphs (n)(11)(ii)(A) through (D). Beneficial ownership of any such trust is determined under this paragraph (n)(1)(ii), utilizing the criteria for beneficial owners of a transferee trust.

(2) *Closing or settlement agent.* The term “closing or settlement agent” means any person, whether or not acting as an agent for a title agent or company, a licensed attorney, real estate broker, or real estate salesperson, who for another and with or without a commission, fee, or other valuable consideration and with or without the intention or expectation of receiving a commission, fee, or other valuable consideration, directly or indirectly, provides closing or settlement services incident to the transfer of residential real property.

(3) *Closing or settlement statement.* The term “closing or settlement

statement” means the statement of receipts and disbursements prepared for the transferee for a transfer of residential real property.

(4) *Date of closing.* The term “date of closing” means the date on which the transferee entity or transferee trust receives an ownership interest in residential real property.

(5) *Non-financed transfer.* The term “non-financed transfer” means a transfer that does not involve an extension of credit to all transferees that is:

(i) Secured by the transferred residential real property; and

(ii) Extended by a financial institution that has both an obligation to maintain an anti-money laundering program and an obligation to report suspicious transactions under this chapter.

(6) *Ownership interest.* The term “ownership interest” means the rights held in residential real property that are demonstrated:

(i) Through a deed, for a reportable transfer described in paragraph (b)(1)(i), (ii), or (iii) of this section; or

(ii) Through stock, shares, membership, certificate, or other contractual agreement evidencing ownership, for a reportable transfer described in paragraph (b)(1)(iv) of this section.

(7) *Recordation office.* The term “recordation office” means any State, local, Territory and Insular Possession, or Tribal office for the recording of reportable transfers as a matter of public record.

(8) *Signing individual.* The term “signing individual” means each individual who signed documents on behalf of the transferee as part of the reportable transfer. However, it does not include any individual who signed documents as part of their employment with a financial institution that has both an obligation to maintain an anti-money laundering program and an obligation to report suspicious transactions under this chapter.

(9) *Statutory trust.* The term “statutory trust” means any trust created or authorized under the Uniform Statutory Trust Entity Act or as enacted by a State. For the purposes of this subpart, statutory trusts are transferee entities.

(10) *Transferee entity.* (i) Except as set forth in paragraph (n)(10)(ii) of this section, the term “transferee entity” means any person other than a transferee trust or an individual.

(ii) A transferee entity does not include:

(A) A securities reporting issuer defined in 31 CFR 1010.380(c)(2)(i);

(B) A governmental authority defined in 31 CFR 1010.380(c)(2)(ii);

(C) A bank defined in 31 CFR 1010.380(c)(2)(iii);

(D) A credit union defined in 31 CFR 1010.380(c)(2)(iv);

(E) A depository institution holding company defined in 31 CFR 1010.380(c)(2)(v);

(F) A money service business defined in 31 CFR 1010.380(c)(2)(vi);

(G) A broker or dealer in securities defined in 31 CFR 1010.380(c)(2)(vii);

(H) A securities exchange or clearing agency defined in 31 CFR 1010.380(c)(2)(viii);

(I) Any other Exchange Act registered entity defined in 31 CFR 1010.380(c)(2)(ix);

(J) An insurance company defined in 31 CFR 1010.380(c)(2)(xii);

(K) A State-licensed insurance producer defined in 31 CFR 1010.380(c)(2)(xiii);

(L) A Commodity Exchange Act registered entity defined in 31 CFR 1010.380(c)(2)(xiv);

(M) A public utility defined in 31 CFR 1010.380(c)(2)(xvi);

(N) A financial market utility defined in 31 CFR 1010.380(c)(2)(xvii);

(O) An investment company as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a)) that is registered with the Securities and Exchange Commission under section 8 of the Investment Company Act (15 U.S.C. 80a–8); and

(P) Any legal entity controlled or wholly owned, directly or indirectly, by an entity described in paragraphs (n)(10)(ii)(A) through (O) of this section.

(11) *Transferee trust.* (i) Except as set forth in paragraph (n)(11)(ii) of this section, the term “transferee trust” means any legal arrangement created when a person (generally known as a grantor or settlor) places assets under the control of a trustee for the benefit of one or more persons (each generally known as a beneficiary) or for a specified purpose, as well as any legal arrangement similar in structure or function to the above, whether formed

under the laws of the United States or a foreign jurisdiction. A trust is deemed to be a transferee trust regardless of whether residential real property is titled in the name of the trust itself or in the name of the trustee in the trustee’s capacity as the trustee of the trust.

(ii) A transferee trust does not include:

(A) A trust that is a securities reporting issuer defined in 31 CFR 1010.380(c)(2)(i);

(B) A trust in which the trustee is a securities reporting issuer defined in 31 CFR 1010.380(c)(2)(i);

(C) A statutory trust; or

(D) An entity wholly owned by a trust described in paragraphs (n)(11)(ii)(A) through (C) of this section.

§ 1031.321 [Reserved]

Andrea M. Gacki,

Director, Financial Crimes Enforcement Network.

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BILLING CODE 4810–02–P

GTO Information Collection Form

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Under 31 U.S.C. § 5326(a), the Treasury Department's Financial Crimes Enforcement Network (FinCEN) issued a Geographic Targeting Order to title insurance companies requiring the collection of beneficial ownership information for certain real estate transactions.

Please complete the below questionnaire. This Company will rely on the answers provided to meet its reporting obligations under Federal law.

Who is completing this form?

Name	Position/Title	Company/Law Firm	
Postal Address (Headquarters)	City	State	Zip
Phone	E-Mail	Fax	

Transactional Information

Property Address (If multiple properties see NOTE below)				
City		State	Zip	County
Date of Settlement	Total purchase price (If multiple properties see NOTE below) \$			
Type of Transaction: ☐ Residential (1-4 family) ☐ Commercial			Bank Financing: ☐ Yes ☐ No	
Purchaser type: ☐ Natural Person ☐ Corporation ☐ LLC ☐ Partnership ☐ Other				

NOTE: If more than one property is purchased, list each address and purchase price on an addendum.

Purchase Funds Information

Total Amount paid by below instruments: \$	
Which type of Monetary Instruments were used (Use check boxes below)	
☐ U.S. Currency (Paper money & coin)	
☐ Foreign Currency	Country:
☐ Cashier's check(s)	☐ Money order(s)
☐ Certified check(s)	☐ Personal or Business check(s)
☐ Wire or other funds transfer(s)	☐ Virtual Currency

GTO Information Collection Form

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Individual Primarily Representing Purchaser

(Defined as the individual authorized by the entity to enter into legally binding contracts).

Attach Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Type of ID		Issuing State or Country		Gov't ID Number
Last Name		First Name		M.I.
Date of Birth	Occupation	Individual Taxpayer ID # <i>(if none write N/A)</i>		% of ownership
Address		City		State Zip

Purchasing Entity Name & Address

Name of Purchaser				
Taxpayer ID Number or EIN <i>(if none write N/A)</i>			Doing Business Name (DBA) <i>(if none write N/A)</i>	
Address		City		State Zip

Complete the information below if the real estate purchase is being made by a corporation, LLC, partnership, or other legal entity. (Do not report trusts.)

For Corporations, LLCs, Partnerships and Other Entities provide the information for:

- Each **BENEFICIAL OWNER** defined as an individual who, directly or indirectly, owns 25% or more of the equity interests of the Purchaser.
- If a legal entity or a series of legal entities own the equity interests of the Purchaser, provide information for each **BENEFICIAL OWNER**, of each legal entity in the series of legal entities.

(Note: It is NOT necessary to complete the address fields if the information is on a legible copy of the government issued ID submitted to the title company.)

Attach Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Type of ID		Issuing State or Country		Govt' ID Number
Last Name		First Name		M.I.
Date of Birth	Occupation	Individual Taxpayer ID # <i>(if none write N/A)</i>		% of ownership
Address		City		State Zip

GTO Information Collection Form



**American Land
Title Association**
Protecting the American Dream Since 1907

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Attach Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Type of ID		Issuing State or Country	Gov't ID Number	
Last Name		First Name		M.I.
Date of Birth	Occupation	Individual Taxpayer ID # <i>(if none write N/A)</i>		% of ownership
Address		City	State	Zip

Attach Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Type of ID		Issuing State or Country	Gov't ID Number	
Last Name		First Name		M.I.
Date of Birth	Occupation	Individual Taxpayer ID # <i>(if none write N/A)</i>		% of ownership
Address		City	State	Zip

Attach Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Type of ID		Issuing State or Country	Gov't ID Number	
Last Name		First Name		M.I.
Date of Birth	Occupation	Individual Taxpayer ID # <i>(if none write N/A)</i>		% of ownership
Address		City	State	Zip

Attach Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Type of ID		Issuing State or Country	Gov't ID Number	
Last Name		First Name		M.I.
Date of Birth	Occupation	Individual Taxpayer ID # <i>(if none write N/A)</i>		% of ownership
Address		City	State	Zip

GTO Information Collection Form



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Attach Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Type of ID		Issuing State or Country	Gov't ID Number	
Last Name		First Name		M.I.
Date of Birth	Occupation	Individual Taxpayer ID # (if none write N/A)		% of ownership
Address		City	State	Zip

Attach Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Type of ID		Issuing State or Country	Gov't ID Number	
Last Name		First Name		M.I.
Date of Birth	Occupation	Individual Taxpayer ID # (if none write N/A)		% of ownership
Address		City	State	Zip

Attach Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Type of ID		Issuing State or Country	Gov't ID Number	
Last Name		First Name		M.I.
Date of Birth	Occupation	Individual Taxpayer ID # (if none write N/A)		% of ownership
Address		City	State	Zip

I declare that to the best of my knowledge, the information I have furnished is true, correct and complete. I understand that this Title Company will rely on this information for the purposes of completing any reports made pursuant to an obligation under 31 U.S.C. § 5326(a),

Signature:	Date:
Type or Print Name:	Title: