

Regulatory Alert

Regulatory Insights



December 2021

Countering Corruption: Beneficial Ownership, Real-Estate Transactions

With new issuances from FinCEN and the Administration's focus on anti-corruption, companies should expect both additional rulemakings and increased regulatory attention on matters involving beneficial ownership/CDD, SAR filings, and anti-corruption compliance programs. (Note: FinCEN's proposal for reporting beneficial ownership information is the first of three rulemakings that will implement the provisions of the CTA and inform the content of a national database on corporate ownership. The additional rulemakings, which will work in concert with this rulemaking when final, will address creation of the beneficial ownership registry and related amendments to the CDD rules.)

The Administration recently released the [United States Strategy on Countering Corruption](#) (Strategy), which outlines a "whole-of-government" approach for preventing, limiting, and responding to corruption and related crimes. The Strategy acknowledges that many of the challenges posed by corruption have a transnational dimension, recognizing ways in which the U.S. and international financial systems have been used to launder illicit proceeds and promoting measures to mitigate these risks. Rulemakings recently issued by FinCEN, addressing real estate transactions and beneficial ownership, directly support the Strategy.

U.S. Strategy on Countering Corruption

The Administration's Strategy establishes how the U.S. government will work both domestically and internationally, with governmental and non-governmental partners, to address corruption and related crimes. The activities will be organized under the following five "pillars":

- Modernizing, coordinating, and resourcing U.S. government efforts to fight corruption
- Curbing illicit finance
- Holding corrupt actors accountable

- Preserving and strengthening the multilateral anti-corruption architecture
- Improving diplomatic engagement and leveraging foreign assistance resources to achieve anti-corruption policy goals

The Administration states that it has already begun to implement actions to meet the objectives under each of the pillars. The two FinCEN rulemakings outlined below are among the "pillar two" measures to curb illicit finance.

AML Regulations for Real Estate Transactions

FinCEN published an [Advance Notice of Proposed Rulemaking](#) (ANPR) seeking public comment on how to address the risk of money laundering and other illicit activity associated with non-financed transactions in the U.S. real estate market. Non-financed purchases of real estate are not currently subject to AML/CFT (anti-money laundering/countering the financing of terrorism) regulatory requirements because they do not involve financing underwritten by a financial institution subject to BSA (Bank Secrecy Act) requirements.

As outlined in the ANPR, FinCEN is considering expanding recordkeeping and reporting requirements to address non-financed transactions of residential and commercial real estate, including certain real estate purchases by natural persons. Such requirements would generally include filing of SARs (Suspicious Activity Reports) and adoption of AML/CFT programs; FinCEN is also considering whether to apply customer due diligence rules with beneficial ownership requirements.

FinCEN is seeking public comment on implementing this system, while minimizing reporting burdens for companies. Comment is requested (no later than February 7, 2022) on the potential scope of such regulations, including consideration of:

- The persons who should be subject to the requirements
- The types of real estate purchases that should be covered
- The information that should be reported and retained
- The geographic scope of such requirements
- The appropriate reporting dollar-value threshold
- Whether there are alternative approaches to address the risk of money laundering and other illicit finance activity in non-financed real estate transactions.

Beneficial Ownership Information Reporting Requirements

FinCEN also issued a [Notice of Proposed Rulemaking](#) (NPR) to implement beneficial ownership information (BOI) reporting provisions (as required by the Corporate Transparency Act, or CTA) with the aim of providing critical information to law enforcement and impeding the ability to conceal and move illicit proceeds through legal entities like shell companies.

The proposed rule outlines who would be required to submit a BOI report, as well as when and what information would be required to be reported. More specifically, reporting companies would be required to file reports with FinCEN identifying two categories of individuals: i) beneficial owners of the entity; and ii) individuals who filed the application to form the entity or registered it to do business. Highlights of the proposed rule, as outlined by FinCEN, follow.

Reporting Companies

- Two types of reporting companies are defined—domestic and foreign—depending on where the entity was formed, and with whom the entity filed and registered for business. In both instances, the

definition includes corporations, limited liability companies, and any entity formed with (or registered to do business with) any secretary of state or similar office of a state or Native American tribe.

- In keeping with the CTA, 23 types of entities would be exempt from the definition of “reporting company,” including certain types of trusts. These exempt entities generally include entities subject to “substantial federal or state regulation” such as securities issuers, banks, depository institution holding companies, and insurance companies.

Beneficial Owners

- A “beneficial owner” would be defined to include any individual who:
 - Exercises “substantial control” over a reporting company (as defined in the rule), or
 - Owns or controls at least 25 percent of the “ownership interests” of a reporting company.
- In keeping with the CTA, five types of individuals are exempted from the definition of “beneficial owner,” subject to certain conditions, including minor children, nominees or other intermediaries, employees, inheritors, and creditors.
- In defining who has “substantial control,” the proposed rule outlines a range of activities that could constitute “substantial control” of a company. However, FinCEN sets out three specific indicators of substantial control: i) service as a senior officer; ii) authority over the appointment or removal of any senior officer or dominant majority of the board of directors; and iii) direction, determination, or decision of, or substantial influence over important matters of the reporting company.

Company Applicants

- For domestic reporting companies, the proposed rule defines a “company applicant” as the individual who files the document that forms the entity.
- For foreign reporting companies, a company applicant would be the individual who files the document that first registers the entity to do business in the United States.
- In both cases, the proposed regulation specifies that anyone who directs or controls the filing of the relevant document by another would also be a company applicant.

Beneficial Ownership Information Reports

- When filing BOI reports with FinCEN, the reporting company would be required to identify for itself and

each of its beneficial owners and company applicants: name, birthdate, address, and a unique identifying number from an acceptable identification document.

- If an individual provides his or her BOI to FinCEN, the individual can obtain a “FinCEN identifier,” which can then be provided to FinCEN in lieu of other required information about the individual.
- The proposed regulations also include a voluntary mechanism to allow reporting of the Taxpayer Identification Number (TIN) for a beneficial owner or company applicant.

Timing

- The timing of BOI reports would depend on:
 - When a reporting company was created or registered, and
 - Whether the report at issue is an initial report, an updated report providing new information, or a report correcting erroneous information in a previous report
- Domestic and foreign reporting companies created before the effective date of the final regulation would be required to file their initial reports no later than one year after the effective date of the rule; reporting companies created or registered after the effective date would have 14 days after their formation to file.
- Reporting companies would have 30 days to file updates to their previously filed reports, and 14 days to correct inaccurate reports after they discover or

should have discovered the reported information is inaccurate.

- In keeping with the CTA, any person that willfully provides, or attempts to provide, false or fraudulent beneficial ownership information to FinCEN, or willfully fails to report complete or updated beneficial ownership information to FinCEN may be subject to civil or criminal penalties.

FinCEN requests comment on this proposed rule to be submitted no later than February 7, 2022.

Please refer to:

- [Press Release](#): FinCEN Launches Regulatory Process for New Real Estate Sector Reporting Requirement to Curb Illicit Finance
- [Press Release](#): FinCEN Issues Proposed Rule for Beneficial Ownership Reporting to Counter Illicit Finance and Increase Transparency
- [Fact Sheet](#): U.S. Strategy on Countering Corruption
- [KPMG Regulatory Alert | Bank Secrecy Act and Anti-Money Laundering Reform](#) (the CTA was enacted as part of the Anti-Money Laundering Act of 2020 within the National Defense Authorization Act for Fiscal Year 2021)

For additional information, please contact [John Caruso](#) or [Edwige Sacco](#).

Contact the author:



Amy Matsuo
Principal and Leader
ESG and Regulatory Insights
amatsuo@kpmg.com

kpmg.com/socialmedia



Some or all of the services described herein may not be permissible for KPMG audit clients and their affiliates or related entities.

All information provided here is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the facts of the particular situation.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.