Action Item Information:

1. Beneficial Ownership Policy - Executive Summary

2. Beneficial Ownership Policy - Issue Summary

3. Beneficial Ownership Policy – Committee Activity

4. FinCEN Advisory to Financial Institutions and Real Estate Firms and Professionals

5. Issue Summary – Money Laundering

NAR Business Issues Policy Committee

Policy Supporting Disclosure of Beneficial Ownership Information by a Business Entity

Chair Chris Kutzkey, submitted the following:

EXECUTIVE SUMMARY

On September 20, 2017, the Business Issues Policy Committee finalized recommendations to NAR leadership creating new policy related to the disclosure of beneficial ownership interests by anonymous shell companies.

The Business Issues Policy Committee recommends, "**NAR support the disclosure of beneficial ownership of business entities at the time those entities are registered with the states, with appropriate consideration given to address legitimate business privacy concerns**.

Anonymous shell companies are increasingly being used by corrupt foreign and domestic interests to launder money via real estate purchases. Currently, there are no federal laws requiring the identities of the "beneficial owners," i.e. the individuals who control and benefit from these companies. This has created obstacles for law enforcement agencies' enforcement of anti-money laundering (AML) laws.

Legislation has been introduced to address this problem by requiring the disclosure of the beneficial owners of a shell company when it is formed and registered with its home state. If a state prefers not to collect this data, it could choose to have Treasury take on the responsibility. The information would not be made public, and only would be disclosed to law enforcement or financial institutions that request it in order to fulfill their AML responsibilities. Allowing law enforcement to have access to such information will improve tracking of illicit money laundering schemes, and thereby reduce growing pressures to impose bank-like AML responsibilities on real estate professionals.

Issue Summary: Disclosure of Beneficial Ownership Information

What is the fundamental issue?

Anonymous shell companies have long been used to purchase real estate and other assets. Traditional reasons for establishing such companies have included a desire by high profile buyers for privacy or for risk management purposes. Anonymous shell companies have also sometimes been used to fund corrupt domestic and foreign interests, such as laundering money through real estate purchases. To address this issue, legislation has been introduced that would require disclosure of the beneficial owners of a corporation upon creation to prohibit a shell company from masking the actual ownership interests. Such information could limit the potential criminal intent for creating an anonymous company, such as to launder money, perpetrate fraud, or finance terrorism.

I am a real estate professional. What does this mean for my business?

Real estate professionals should understand their existing legal responsibilities and the current efforts to combat money laundering and the financing of terrorism. Continued partnership with enforcement agencies will help in detecting and addressing the use of real estate in illegal financing activities.

At this time, real estate firms and professionals engaged in brokerage or property management activities are not required to implement formal anti-money laundering or anti-terrorist financing (AML/TF) programs, as do regulated financial institutions. However, the U.S. Department of Treasury has the authority to change this and expand coverage of these requirements. To date, the Department of Treasury implements a risk-based analysis approach, focusing regulation on high-risk entities such as financial institutions rather than non-financial professions.

Recently, the Financial Crimes Enforcement Network (FinCEN), Treasury's lead agency on AML/TF requirements, issued an Advisory to Financial Institutions and Real Estate Firms and Professionals to provide information on money laundering risks for real estate transactions. The Advisory provides examples of money laundering in the real estate sector, how shell companies and all-cash purchases may be linked to illicit activity, and ways in which real estate professionals' can voluntarily file suspicious activity reports.

Existing NAR Policy:

NAR supports continued efforts to combat money laundering and the financing of terrorism through the regulation of entities using a risk-based analysis. Any risk-based assessment would likely find very little risk of money laundering involving real estate agents or brokers. Regulations that would require real estate agents and brokers to adopt anti-money laundering programs would prove burdensome and unnecessary given the existing AML/TF regulations that already apply to United States financial institutions.

Issue Summary: Disclosure of Beneficial Ownership Information

Action Needed:

NAR has no policy that would allow it to weigh in on the issue of disclosure of beneficial ownership of anonymous shell companies. Policy would be needed for NAR staff to participate in the growing debate.

Proponents Arguments:

Proponents believe the burdens of extensive anti-money laundering requirements imposed on real estate professionals would outweigh any perceived benefits. Efforts are better focused on those institutions involved in financing and handling buyer funds, as opposed to those settlement service providers, like real estate professionals, who are not involved with the transfer of funds to purchase real estate.

Disclosure of beneficial ownership would allow law enforcement to better track and identify illegal money laundering activities. Proper limits on access to this ownership data would also preclude potential abuses.

Opposition Arguments:

Some believe that real estate agents and brokers should be required to have specific anti-money laundering plans and procedures in place based on their involvement in domestic and foreign real estate purchases. While a majority of the risk and regulatory burdens to combat money-laundering fall with the financial sector, there are a number of Designated Non-Financial Businesses and Professions (DNFBPs) that are often implicated in financial activities, such as lawyers and real estate professionals, which are linked to illegal arrangements. The risk is especially great with real estate professionals operating in high-end luxury markets.

Opponents of the collection of beneficial ownership information believe that doing so could result in abuses of the information and harm to those who use a shell structure for legitimate purposes.

Background:

The USA PATRIOT Act, the Bank Secrecy Act, and Executive Order 13224 have increased the level of the government's scrutiny of financial transactions in an effort to prevent money laundering and block the financial dealings of terrorists. Under the USA PATRIOT Act, financial institutions are required to create AML and customer identification programs. Treasury's Office of Foreign Assets Control (OFAC) administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and individuals. OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries collectively called "Specially

Issue Summary: Disclosure of Beneficial Ownership Information

Designated Nationals (SDNs)."

There are several duties imposed on real estate professionals, including:

1. Real estate brokers and agents must report, using IRS form 8300, any single or series of related transactions in which they receive cash in excess of $10,000.

2. SDN assets are blocked, and all businesses (including real estate agents and brokers) have a responsibility to ensure that they are not dealing with any SDN by checking the list provided by OFAC. The SDN list can be found at: www.treasury.gov/sdn.

NAR has and continues to work closely with the Department of Treasury and has previously developed voluntary guidelines for real estate professionals to follow for possible money laundering situations and how to report those situations. NAR continues to educate real estate agents and brokers of their responsibilities under current law.

Legislative/Regulatory Status/Outlook:

Increasingly, Congress and the Administration have come to recognize the gap that exists in collection of beneficial ownership information. A 2016 report on the United States by the Financial Action Task Force (FATF), an international organization designed to combat illicit finance schemes, revealed that the lack of timely access to adequate, accurate, and current beneficial ownership information remains a fundamental deficiency in an otherwise robust AML regulatory regime. As a result, legal persons in the U.S. continue to be abused for ML/TF purposes through shell companies that mask true ownership interests and intentions.

Currently, there is no requirement to systematically make beneficial ownership information available to law enforcement agencies, allowing anonymous shell companies to fund illicit activities, including purchasing real estate to launder money. According to FATF, these risks are magnified by the enormous size of the U.S. economy, the large number of companies formed in the U.S., and the lack of comprehensive AML/TF requirements for DNFBPs.

There are several bipartisan legislative measures in the House and the Senate that would close this gap by requiring beneficial ownership information to be reported to law enforcement agencies, and *imposing no requirements on DNFBPs*. The information would not be publicly available and would be collected by the individual state (S. 1454) or the state could elect to have the Federal Government collect (H.R. 3089; S. 1717). Allowing law enforcement to have access to such information will improve tracking of illicit financing schemes early on in the process, before the real estate market could be implicated.

Current Legislation:

H.R. 3089, Reps. Maloney (D-NY) and King (R-NY), *Corporate Transparency Act*.

Issue Summary: Disclosure of Beneficial Ownership Information

S. 1717, Sens. Wyden (D-OR) and Rubio (R-FL), *Corporate Transparency Act*.

S. 1454, Sens. Whitehouse (D-RI) and Grassley (R-IA), *True Incorporation Transparency for Law Enforcement (TITLE) Act.*

NAR Business Issues Policy Committee

Policy Supporting Disclosure of Beneficial Ownership Information by a Business Entity

Committee Activity

NAR has been actively engaged in promoting efforts to combat money laundering, such as voluntarily filing of suspicious activity reports, but has not had specific policy regarding the misuse of anonymous shell companies for laundering money. In order to participate in the debate on this issue, the Business Issues Policy Committee began examining the issue during the May Legislative meetings, where Lawrence Scheinert, Director, Office of Special Measures for the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN) addressed the group. The presentation offered important background and insight into money laundering through the purchase of real estate:

- Anonymous shell companies are often established by high profile buyers for privacy or for risk management purposes to purchase real estate and other assets. However, anonymous shell companies have also been used to fund corrupt domestic and foreign interests, such as laundering money through real estate purchases.
- When a person sets up a company, there is no requirement to disclose the real people who control or profit from its activities. Individuals are able to conceal their identity by using others to represent the company, such as an attorney who lacks control or an economic stake in the company.
- To address this issue, legislation has been introduced that would require disclosure of the beneficial owners of a corporation or LLC upon creation to prohibit a shell company from masking the actual ownership interests.[1] The legislation would require disclosure of specific information to law enforcement officials and financial institutions complying with *Bank Secrecy Act* obligations to limit the potential criminal intent for creating an anonymous company, such as to launder money, perpetrate fraud, or finance terrorism.

To learn more about this issue, in July, an industry expert from the Financial Accountability and Corporate Transparency (FACT) Coalition briefed the Committee via webinar. During the webinar, the Committee learned about details on anonymous shell companies, historical problematic actions, and the various legislative proposals. Prior to the webinar, a detailed issue summary developed by staff was circulated to the Committee. Following the webinar, the Committee responded to a survey on the issues raised during the webinar and NAR's future role. Staff then provided feedback to questions raised by members on the survey.

In September, the Committee held a conference call to debate whether NAR should develop policy to support the disclosure of beneficial ownership of business entities. Discussion during the call focused on a number of important issues including:

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[1] There are several bipartisan legislative measures in the House and the Senate that would require beneficial ownership information to be reported to law enforcement agencies, and *imposing no requirements on real estate professionals*. The information would not be publicly available and would be collected by the individual state (S. 1454) or the state could elect to have the Federal Government collect (H.R. 3089; S. 1717). See Appendix D for more information.

- *Impact on the real estate industry*: Members were concerned with how real estate professionals and the sales transaction would be impacted if such policy were enacted. No requirements would be imposed on real estate agents or brokers, as the beneficial ownership information would only be submitted when a corporation or LLC is created, and when necessary to update the reported information. Law enforcement officials' access to information on the true owners of anonymous shell companies will improve tracking of illegal financing schemes, which would occur well before the real estate market and real estate professionals could be impacted.

- *Collection of information*: Committee members debated who should be responsible for collecting this information – the state or Federal Government – and the benefits and drawbacks to each. Under current legislation, the state would be responsible for collecting the information, unless the state elects to have the Federal Government collect the information. Where the information would be stored and by which level of government also raised security and privacy concerns, especially in light of recent breaches of non-public personal identifiable information. Operational concerns such as these would be worked out through implementing regulations.

- *Privacy concerns*: Members were especially concerned with the legitimate reasons buyers and sellers use anonymous shell companies for real estate transactions. It was explained that shell companies could continue to conduct these transactions anonymously, and only during creation of that business entity, would the beneficial owners be disclosed to the state or Federal Government, which would then only be revealed for specific uses, such as law enforcement purposes. The ownership information reported would not be made public.

- *Impact on businesses:* The Committee raised concerns with potential impact on business operations, as well as those seeking to legitimately create a shell company. Staff explained some of the exceptions to the requirements, including publicly traded companies and those with brick and mortar stores with employees. No additional obligations would be imposed on the business outside creation of the entity and required updating information when changes occur.

- *NAR involvement:* Several members had issues with why NAR should be involved in an issue related to the creation of business entities, and staff explained how engaging on issues, beyond those impacting the real estate sales transaction, are necessary to illustrate real estate professionals' continued support for anti-money laundering initiatives. This is especially important at a time when federal regulators are increasing scrutiny of real estate sales transactions to stop money-laundering schemes. Staff are also continuously meeting with administration officials to discuss these issues.

After the discussion, final policy was adopted by unanimous consent to **support the disclosure of beneficial ownership of business entities at the time those entities are registered with the states, with appropriate consideration given to address legitimate business privacy concerns**.

UNITED STATES DEPARTMENT OF THE TREASURY
FinCEN
FINANCIAL CRIMES ENFORCEMENT NETWORK

ADVISORY

FIN-2017-A003 **August 22, 2017**

Advisory to Financial Institutions and Real Estate Firms and Professionals

Drug traffickers, corrupt officials, money launderers, and other criminals seek to exploit real estate transactions to hide their illicit profits, conceal their identities, and launder funds.

This Advisory should be shared with:

- *Real Estate Professionals*
- *Organization Executives*
- *Comptroller/Treasury/ Accounting Departments*
- *Compliance Departments*
- *Legal Departments*

The Financial Crimes Enforcement Network (FinCEN) is issuing this advisory to provide financial institutions and the real estate industry with information on money laundering risks associated with certain real estate transactions. As highlighted by recent Geographic Targeting Orders (GTOs) issued by FinCEN, real estate transactions involving luxury property purchased through shell companies—particularly when conducted with cash and no financing—can be an attractive avenue for criminals to launder illegal proceeds while masking their identities.[1]

Each type of financial institution—defined by law to also include "persons involved in real estate closings and settlements"—has certain anti-money laundering obligations and can provide valuable reporting on potential money laundering and terrorist financing.[2] While real estate brokers, escrow agents, title insurers, and other real estate professionals are not required to, FinCEN encourages them to voluntarily report suspicious transactions involving real estate purchases and sales. As with other financial institutions under the Bank Secrecy Act (BSA), a safe harbor from liability exists with respect to the filing of suspicious activity reports, including voluntary ones, by persons involved in real estate closings and settlements.[3]

1. Although FinCEN to date has focused on residential real estate, money laundering can also involve commercial real estate transactions.
2. FinCEN—a bureau of the U.S. Department of the Treasury—administers and issues regulations pursuant to the Bank Secrecy Act (BSA). The BSA is the commonly used term for statutory enactments requiring U.S. financial institutions to assist U.S. government agencies to detect and prevent money laundering, terrorism finance, and other illegal activity. The BSA's definition of "financial institution" includes "persons involved in real estate closings and settlements." 31 U.S.C. § 5312(a)(2)(U). While that term has not yet been defined under FinCEN's regulations, it is not intended to include individual buyers and sellers.
3. *See* 31 U.S.C. § 5318(g)(3).

Money Laundering Risks in the Real Estate Sector

Real estate transactions and the real estate market have certain characteristics that make them vulnerable to abuse by illicit actors seeking to launder criminal proceeds. For example, many real estate transactions involve high-value assets, opaque entities, and processes that can limit transparency because of their complexity and diversity. In addition, the real estate market can be an attractive vehicle for laundering illicit gains because of the manner in which it appreciates in value, "cleans" large sums of money in a single transaction, and shields ill-gotten gains from market instability and exchange-rate fluctuations.[4] For these reasons and others, drug traffickers, corrupt officials, and other criminals can and have used real estate to conceal the existence and origins of their illicit funds.

Example: Corruption and Residential Real Estate

A high-profile case illustrating money laundering risks in the real estate sector involves 1Malaysia Development Berhad (1MDB), a Malaysian sovereign wealth fund. In 2016, the U.S. Department of Justice sought forfeiture of over $1 billion in assets—including luxury real estate—associated with funds stolen by corrupt foreign officials from 1MDB. This included a hotel, two homes, and a mansion in Beverly Hills, CA; a home in Los Angeles, CA; a condominium, two apartments, and a penthouse in New York, NY; and, a townhouse in London, England; all with a collected value estimated at approximately $315 million.

This money laundering risk in the real estate market was a principal driver of FinCEN's decision to issue GTOs, which, as described below, have provided greater insight into illicit finance risks in the high-end real estate market. FinCEN's analysis of BSA and GTO reported data, law enforcement information, and real estate deed records, as depicted by the case studies in this advisory, indicates that high-value residential real estate markets are vulnerable to penetration by foreign and domestic criminal organizations and corrupt actors, especially those misusing otherwise legitimate limited liability companies or other legal entities to shield their identities. In addition, when these transactions are conducted without any financing *(i.e.*, "all-cash"), they can potentially avoid traditional anti-money laundering (AML) measures adopted by lending financial institutions, presenting increased risk.

FinCEN encourages both financial institutions subject to mandatory suspicious reporting requirements, as well as real estate professionals filing voluntary suspicious activity reports, to keep the risks detailed below in mind when identifying and reporting suspicious transactions.

4. Money laundering is a crime orchestrated to conceal the source of illegal proceeds so that the money can be used without detection of its criminal source. Visit www.fincen.gov for further information.

Use of Shell Companies Decreases Transparency

Criminals launder money to obscure the illicit origin of their funds. To this end, money launderers can use a number of vehicles to reduce the transparency of their transactions. One such vehicle, highlighted in the below case study, is the use of shell companies. Shell companies are typically non-publicly traded corporations, limited liability companies (LLCs), or trusts that have no physical presence beyond a mailing address and generate little to no independent economic value.[5] Most shell companies are formed by individuals and businesses for legitimate purposes, such as to hold stock or assets of another business entity or to facilitate domestic and international currency trades, asset transfers, and corporate mergers. Shell companies can often be formed without disclosing the individuals that ultimately own or control them (*i.e.*, their beneficial owners) and can be used to conduct financial transactions without disclosing their true beneficial owners' involvement. Criminals abuse this anonymity to mask their identities, involvement in transactions, and origins of their wealth, hindering law enforcement efforts to identify individuals behind illicit activity.[6]

Example: Drug Trafficking, Luxury Real Estate, and Shell Companies

An example of abuse of the luxury real estate sector involves current Venezuelan Vice President Tareck El Aissami and his frontman Samark Lopez Bello. The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) designated El Aissami under the Foreign Narcotics Kingpin Designation Act for playing a significant role in international narcotics trafficking. Lopez Bello was designated for providing material assistance, financial support, or goods or services in support of the international narcotics trafficking activities of, and acting for or on behalf of, El Aissami.[7] In addition, OFAC designated shell companies tied to Lopez Bello that were used to hold real estate.[8] Lopez Bello is tied to significant property and other assets, which were also blocked as a result of OFAC's action.

The misuse of shell companies to launder money is a systemic concern for law enforcement and regulatory agencies, but it is of particular concern in the "all-cash" segment of the real estate market, which currently has fewer AML protections.

5. For further information on shell companies, see FinCEN Guidance FIN-2006-G014 "Potential Money Laundering Risks Related to Shell Companies" (November 2006) and FinCEN's SAR Activity Review Trends, Tips, and Issues: Issue 1 (October 2000), Issue 2 (June 2001), and Issue 7 (August 2004).
6. In May 2018, many financial institutions will be required to implement customer due diligence obligations and collect beneficial ownership information on their legal entity customers at account opening. See, 81 Fed. Reg. 91 (May 2016).
7. *See* "Treasury Sanctions Prominent Venezuelan Drug Trafficker Tareck El Aissami and His Primary Frontman Samark Lopez Bello" (February 2017).
8. *Id*. Generally, under U.S. law, the assets and accounts of a designated individual, entity, or country must be frozen or blocked by U.S. individuals or entities.

Use of "All-Cash" Real Estate Purchases Further Decreases Transparency

Criminals can use all-cash purchases to make payments in full for properties and evade scrutiny—on themselves and the origin of their wealth—that is regularly performed by financial institutions in transactions involving mortgages.[9] All-cash transactions account for nearly one in four residential real estate purchases, totaling hundreds of billions of dollars nationwide, and are particularly exposed to abuse.[10] All-cash transactions account for an even larger stake in some U.S. markets. For instance, nearly 50 percent of residential real estate sales in Miami-Dade County were all-cash transactions in 2015 and 2016.[11] Many all-cash transactions are routine and legitimate, however, they also present significant opportunities for exploitation by illicit actors.

Example: Fraud, Money Laundering, and All-Cash Purchases

An example highlighting fraud and money laundering through all-cash transactions involves real estate agent Anthony Keslinke, who in 2016 was jailed, ordered to pay $1,427,916 in restitution to victims, and forfeited $3,808,831. Keslinke was the leader of both a large-scale bank fraud conspiracy and a separate money laundering conspiracy. Between 2011 and 2014, Keslinke used straw buyers and altered records and documents to purchase real estate with cash throughout Northern California, which he then resold at significant financial gain.[12]

FinCEN's Geographic Targeting Orders (GTOs)

In 2016 and 2017, FinCEN issued GTOs to better understand the vulnerabilities presented by the use of shell companies to engage in all-cash residential real estate transactions. A GTO is an order issued by FinCEN under the BSA that imposes additional recordkeeping or reporting requirements on financial institutions or other businesses in a specific geographic area.[13] In this case, FinCEN issued GTOs requiring certain U.S. title insurance companies to record and report information, including beneficial ownership, about legal entities used to make non-financed purchases of high-value residential real estate in seven major U.S. geographic areas.[14]

9. The BSA and FinCEN regulation generally require covered financial institutions—including those providing financing—to conduct diligence on their customers and their source of wealth.
10. The National Association of Realtors (NAR) consistently reports monthly figures on all-cash sales for existing homes to near 25 percent. *See* http://www.realtor.org/topics/existing-home-sales.
11. *See* the Miami Association of Realtors' 2016 Yearly Market Summaries for Single Family Homes and Townhouses and Condos.
12. *See* the Internal Revenue Service's (IRS) "Examples of Money Laundering Investigations – Fiscal Year 2016."
13. *See* 31 U.S.C. § 5326(a), 31 CFR § 1010.370, and Treasury Order 180-01.
14. *See* "GTOs Involving Certain Real Estate Transactions Frequently Asked Questions" (August 2016), "FinCEN Renews Real Estate "GTOs" to Identify High-End Cash Buyers in Six Major Metropolitan Areas" (February 2017), and "FinCEN Targets Shell Companies Purchasing Luxury Properties in Seven Major Metropolitan Areas" (August 2017).

As of May 2, 2017, over 30 percent of the real estate transactions reported under the GTOs involved a beneficial owner or purchaser representative that had been the subject of unrelated Suspicious Activity Reports (SARs) filed by U.S. financial institutions. In other words, the beneficial owners or purchaser representatives in a significant portion of transactions reported under the GTO had been previously connected to a wide array of suspicious activities, including:

- A beneficial owner suspected of being connected to over $140 million in suspicious financial activity since 2009 and who sought to disguise true ownership of related accounts.
- Two beneficial owners (husband and wife) involved in a $6 million purchase of two condominiums were named in nine SARs filed from 2013 – 2016 in connection with allegations of corruption and bribery associated with South American government contracts.
- A beneficial owner suspected of being connected to a network of individuals and shell companies that received over $6 million in wire transfers with no clear business purpose from entities in South America. Much of these funds were used for payments to various real estate related businesses.
- Eleven SARs filed from 2008 through 2015 named either the buyer (an LLC), beneficial owner, or purchaser's representative involved in a GTO-reported $4 million purchase of a residential unit. Law enforcement records indicate that both the purchaser's representative and his business associate were associated with a foreign criminal organization involved in narcotics smuggling, money laundering, health care fraud, and the illegal export of automobiles.

Review of U.S. Anti-Money Laundering Regulations in the Real Estate Sector

The real estate sector is one of many within the U.S. economy for which anti-money laundering (AML) safeguards have been established to protect the U.S. financial system.[15] More specifically, covered financial institutions—including depository institutions, loan or finance companies, and housing government-sponsored enterprises like Fannie Mae and Freddie Mac—generally have obligations to establish AML programs, report suspicious activity to FinCEN using Suspicious Activity Reports (SARs), and understand their customers and their source of wealth. In addition, beginning in May 2018, many financial institutions will be required to implement customer due diligence obligations and collect beneficial ownership information on their legal entity customers opening accounts.[16] FinCEN provides substantial guidance and information on how to implement these requirements effectively.[17]

15. 31 U.S.C. § 5318(h) requires financial institutions, including "persons involved in real estate closings and settlements," to establish an anti-money laundering program that includes, 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.
16. 81 Fed. Reg. 91 (May 2016).
17. For additional information, see https://www.fincen.gov/resources/financial-institutions/mortgage-co-broker.

While FinCEN currently has exempted them from these broader obligations, persons involved in real estate closings and settlements do participate in efforts to safeguard the U.S. real estate industry and financial system from money laundering and terrorism financing through their existing AML/CFT requirements.[18] They, like all U.S. persons engaged in trade and business, must file reports on transactions in currency and certain monetary instruments involving more than $10,000 (commonly referred to as "Form 8300").[19] They also may be required to annually report on foreign bank and financial accounts they own or control, report the transportation of currency across the U.S. border, and keep associated records, as well as respond to FinCEN-issued GTOs.[20] In addition, as other financial institutions under the BSA, persons involved in real estate closings and settlements—which may include real estate brokers, escrow agents, title insurers, and other real estate professionals—can voluntarily report suspicious activity and such disclosures would be protected from liability under the BSA's safe harbor.

The real estate industry recognizes the seriousness and importance of protecting the U.S. real estate market from abuse. For example, the National Association of Realtors has issued red flags and voluntary guidelines to assist real estate professionals minimize the risk of real estate becoming a vehicle for money laundering.[21]

Mandatory Reporting of Suspicious Activity

A covered financial institution is required to file a SAR if it knows, suspects, or has reason to suspect a transaction conducted or attempted by, at, or through the financial institution involves funds derived from: illegal activity, attempts to disguise funds derived from illegal activity, is designed to evade regulations promulgated under the BSA, lacks a business or apparent lawful purpose, or involves the use of the financial institution to facilitate criminal activity.[22]

Voluntary Reporting of Suspicious Activity

SARs play an important role in assisting law enforcement to combat crime as they identify possible illicit activity and criminals. FinCEN encourages persons involved in real estate closings and settlements—which may include real estate brokers, escrow agents, title insurers, and other real estate professionals—to voluntarily file a SAR to report any suspicious transactions.[23] These persons are well-positioned to identify potentially illicit activity as they have access to a more complete view and understanding of the real estate transaction and of

18. *See* FinCEN's advance notice of proposed rulemaking "Anti-Money Laundering Program Requirements for 'Persons Involved in Real Estate Closings and Settlements'" (April 2003).
19. 31 CFR § 1010.330 (Form 8300). A Form 8300 also may be filed voluntarily for any suspicious transaction, even if the total amount does not exceed $10,000.
20. 31 CFR §§ 1010.350 (FBAR), 1010.340 (CMIR), 1010.430 (recordkeeping), and 1010.370 (GTO).
21. *See* "Tips for Spotting Global Money Laundering Schemes" (January 2017) and "Anti-Money Laundering Guidelines for Real Estate Professionals" (November 2012).
22. 31 C.F.R. §§ 1020.320, 1021.320, 1022.320, 1023.320, 1024.320, 1025.320, 1026.320, 1029.320, and 1030.320.
23. For instructions on how to file a SAR with FinCEN see https://www.fincen.gov/resources/filing-information.

those involved in the transaction. For example, real estate brokers may have greater insight as to the potential purpose for which a property is being purchased or the possible origin of a purchaser's funds. When reporting suspicious activity, persons involved in real estate closings and settlements should note that they can benefit from protection from civil liability.[24]

Real estate brokers, escrow agents, title insurers, and other real estate professionals can identify potential suspicious transactions by reviewing available facts and circumstances. Real estate professionals may determine a transaction is suspicious after evaluating whether the real estate transaction:

- Lacks economic sense or has no apparent lawful business purpose. Suspicious real estate transactions may include purchases/sales that generate little to no revenue or are conducted with no regard to high fees or monetary penalties;
- Is used to purchase real estate with no regard for the property's condition, location, assessed value, or sale price;
- Involves funding that far exceeds the purchaser's wealth, comes from an unknown origin, or is from or goes to unrelated individuals or companies; or
- Is deliberately conducted in an irregular manner. Illicit actors may attempt to purchase property under an unrelated individual's or company's name or ask for records (e.g., assessed value) to be altered.

Filing Suspicious Activity Reports (SARs)

To report suspicious transactions, financial institutions—including persons involved in real estate closings and settlements—should electronically submit a SAR through FinCEN's BSA E-Filing System. Additional information on how to complete and file a SAR is available at FinCEN's public website here.

When filing a mandatory or voluntary SAR involving a real estate transaction, financial institutions should provide complete and accurate information, including relevant facts in appropriate SAR fields, and information about the real estate transaction and the circumstances and reasons why such transaction may be suspicious in the narrative section of the SAR.

FinCEN also requests that financial institutions reference this advisory and include the key term

"ADVISORY REAL ESTATE"

in the SAR narrative and in SAR field 33(z) (Money Laundering-Other) to indicate a connection between the suspicious activity being reported and real estate property.

24. *See* 31 U.S.C. § 5318(g)(3)(A). Persons filing SARs should also note that FinCEN protects the confidentiality of such filings.

For Further Information

Additional questions or comments regarding the contents of this advisory should be addressed to the FinCEN Resource Center at FRC@fincen.gov, (800) 767-2825 (Option 9), or (703) 905-3591 (Option 9). ***Financial institutions wanting to report suspicious transactions that may potentially relate to terrorist activity should call the Financial Institutions Toll-Free Hotline at (866) 556-3974 (7 days a week, 24 hours a day)***. The purpose of the hotline is to expedite the delivery of this information to law enforcement. Financial institutions should immediately report any imminent threat to local-area law enforcement officials.

FinCEN's mission is to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.

NAR Issue Summary
Business / Money Laundering and Terrorist Financing

NAR Committee:

Business Issues Policy Committee

What is the fundamental issue?

Real estate professionals should understand their responsibilities in the current efforts being made to combat money laundering.

I am a real estate professional. What does this mean for my business?

The USA PATRIOT Act, the Bank Secrecy Act, and Executive Order 13224 have increased the level of the government's scrutiny of financial transactions in an effort to prevent money laundering and block the financial dealings of terrorists. Under the USA PATRIOT Act, financial institutions are required to create anti-money laundering (AML) and customer identification programs. The Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and individuals. OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries collectively called Specially Designated Nationals (SDNs).

The laws impose the following duties on real estate professionals:

1. Real estate brokers and agents must report, using IRS form 8300, any single or series of related transactions in which they receive cash in excess of $10,000.
2. SDN assets are blocked, and all businesses (including real estate agents and brokers) have a responsibility to ensure that they are not dealing with any SDN by checking the list provided by OFAC. The SDN list can be found at: www.treasury.gov/sdn.

At this time, real estate firms and professionals engaged in brokerage or property management activities are not required to implement formal anti-money laundering or anti-terrorist financing (AML/TF) programs, as do regulated financial institutions. However, the U.S. Department of Treasury has the authority to change this and expand coverage of these requirements. To date, the Department of Treasury implements a risk-based analysis approach, focusing regulation on high-risk entities such as financial institutions rather than non-financial professions.

Recently, the Financial Crimes Enforcement Network (FinCEN), Treasury's lead agency on AML/TF requirements, issued an Advisory to Financial Institutions and Real Estate Firms and Professionals to provide information on money laundering risks for real estate transactions. The Advisory provides examples of money laundering in the real estate sector, how shell companies and all-cash purchases may be linked to illicit activity, and ways in which real estate professionals' can voluntarily file suspicious activity reports. FinCEN also continues tracking data reported by title companies involved in certain high-end real estate transactions through Geographic Targeting Orders (GTOs).

NAR Policy:

NAR Issue Summary
Business / Money Laundering and Terrorist Financing

NAR supports continued efforts to combat money laundering and the financing of terrorism through the regulation of entities using a risk-based analysis. Any risk-based assessment would likely find very little risk of money laundering involving real estate agents or brokers. Regulations that would require real estate agents and brokers to adopt anti-money laundering programs would prove burdensome and unnecessary given the existing AML/TF regulations that already apply to United States financial institutions.

Opposition Arguments:

Some believe that real estate agents and brokers should be required to have specific anti-money laundering plans and procedures in place. NAR believes that such requirements would be overly burdensome compared to the risks. NAR worked with the Department of the Treasury to develop suggested voluntary guidelines for real estate professionals to follow to be on guard for possible money laundering situations and how to report those situations.

Legislative/Regulatory Status/Outlook

In 2003, FinCEN issued an advance notice of proposed rulemaking regarding anti-money laundering program requirements for "person involved in real estate closing and settlements" including real estate agents. NAR submitted comments stating "without evidence suggesting that regulation would substantially benefit the fight against money laundering, the burden on brokers of having to adopt and implement anti-money laundering programs clearly outweighs any perceived benefit." In proposed rules published in 2010, FinCEN deferred proposing rules for real estate agents and others until it could conduct further research and analysis on business operation and money laundering vulnerabilities. FinCEN released its Final Rule in 2012, which continues to defer on covering real estate brokers and agents pending further study and analysis.

NAR continues to monitor closely and has worked with FinCEN to develop an educational publication informing real estate agents and brokers of their responsibilities under current law. To date, educational items have included a fact sheet, suggested voluntary guidelines, and a FinCEN/NAR podcast. The Association of Real Estate Licensing Law Officials (ARELLO) has published the NAR Fact Sheet, which is now being distributed by many state real estate offices.

Increasingly, Congress and the Administration are focusing on the lack of collection of beneficial ownership information that has allowed anonymous shell companies to fund corrupt domestic and foreign interests, such as laundering money through real estate purchases. To address this issue, legislation has been introduced that would require disclosure of the beneficial owners of a corporation or LLC upon creation to prohibit a shell company from masking the actual ownership interests. There are several bipartisan legislative measures in the House and the Senate that would require beneficial ownership information to be reported to law enforcement agencies, and imposing no requirements on real estate professionals. The information would not be publicly available and would be collected by the individual state (S. 1454) or the state could elect to have the Federal Government collect (H.R. 3089; S. 1717).

Current Legislation/Regulation (bill number or regulation)

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In early 2016, FinCEN began to issue Georgraphic Targeting Orders (GTOs), imposing new data collection and reporting requirements on specific title companies involved in certain high-end real estate transactions. These GTOs required title companies to identify natural persons with 25 percent or greater ownership interest in a legal entity making an all cash real estate purchase. The first GTOs were specifically directed at all cash real estate purchases in excess of $3 million dollars and $1 million dollars in the Borough of Manhattan in New York and Miami-Dade County, Florida, respectively.

FinCEN discovered that a significant portion of the reported covered transactions in the GTOs were linked to possible criminal activity by the individuals revealed to be the beneficial owners of the shell company purchasers. As a result, FinCEN has continued expanding and extending the covered geographic areas where title companies must comply with the GTO's data collection and reporting requirements. The latest GTO, effective until March 20, 2018, covers the following geographic areas and transactions:

- $500k and above – Bexar County, Texas
- $1m and above – Miami-Dade, Broward, and Palm Beach Counties, Florida
- $1.5m and above – New York City Boroughs of Brooklyn, Queens, Bronx, and Staten Island
- $2m and above – San Diego, Los Angeles, San Francisco, San Mateo, and Santa Clara Counties, California
- $3m and above – New York City Borough of Manhattan
- $3m and above - City and County of Honolulu, Hawaii

In accordance with the GTOs, title companies, and their agents, must file a report with FinCEN regarding covered purchases of residential real property meeting the requirements above when such purchases are made without a bank loan or similar external financing and is paid at least in part by using currency or a cashier's check, a certified check, a traveler's check, a personal check, a business check, or a money order. Pursuant to the recently passed legislation that directed Treasury to allow investigators to obtain additional records to better target illicit Russian activity, the GTOs will now include wire funds transfers.

The GTOs do not impose any new obligations on real estate professionals. However, it is important for members to be aware of these and the potential impact on real estate sales transactions. In the event a transaction is covered by a GTO, the title company may consult with the real estate professional to obtain information necessary to report in compliance with the order. Such communications should not affect the real estate sales transaction or timeline for closing as title companies are required to report GTO covered transactions to FinCEN within 30 days of the closing.

For more information, visit NAR's Issue Brief on the Geographic Targeting Orders (GTOs).

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