Business / Anti-Money Laundering and Counter 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, terrorist financing, and illicit financial crimes involving real estate.

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:

- 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.
- 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 approach, focusing regulation on high-risk entities such as financial institutions rather than non-financial professions.

In 2017, the Financial Crimes Enforcement Network (FinCEN), Treasury's lead agency on AML/TF requirements, issued anAdvisory to Financial Institutions and Real Estate Firms and Professionalsto 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 throughGeographic Targeting Orders(GTOs).

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NAR also developed and issued the Anti-Money Laundering Voluntary Guidelines for Real Estate Professionals to increase real estate professionals' awareness, knowledge, and understanding of money laundering risks and to provide practical guidance on ways to mitigate various risks.

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.

As anonymous shell companies are increasingly being used by corrupt foreign and domestic interests to launder money via real estate purchases, the lack of identification of "beneficial owners" of these companies has also created obstacles for law enforcement agencies' enforcement of AML laws. NAR therefore supports 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. Allowing law enforcement to have access to such information will improve tracking of illicit money laundering schemes, and also reduce growing pressures to impose bank-like AML responsibilities on real estate professionals.

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 in an effort to be proactive in working collaboratively with regulators to identify ways to pragmatically work to address money laundering and financial crimes involving real estate.

Legislative/Regulatory Status/Outlook

In 2021, Congress passed the Corporate Transparency Act (CTA) and the Anti-Money Laundering Act (AMLA). These two bills aimed to reform the current anti-money laundering regime and to strengthen and modernize anti-money laundering laws. The laws mandated the Financial Crimes Enforcement Network (FinCEN) to work with other federal partners and stakeholders to identify and assess risks and to develop solutions to address current anti-money laundering challenges.

The CTA established a formalized beneficial ownership reporting regime for corporations, limited liability companies, and other legal entities formed under state law in the U.S. The purpose of this beneficial ownership reporting regime is to prevent the formation of anonymous shell companies created under state law and are also often used for illicit purposes.

Under the CTA, FinCEN is authorized to collect beneficial ownership information and mandated to create a

national registry to properly store information that is collected from beneficial owners. FinCEN was also charged with developing the proper safeguards and controls to protect beneficial ownership information submitted to the Bureau. The law provided FinCEN with broad rulemaking and oversight authority to do the following: establish the standards for beneficial ownership information reporting; establish a national anti-money laundering database to beneficial ownership data; establish and outline the guidelines and protocols for access to the beneficial ownership database; to expand Bank Secrecy Act requirements and establish national anti-money laundering and counterterrorism financing reforms among other changes.

In 2024, the Beneficial Ownership Information Reporting rule became effective requiring newly formed entities to report beneficial ownership information to FinCEN. Beginning January 1, 2025, all entities formed in 2023 or earlier will be required to file beneficial ownership information with FinCEN. There are exemptions to the beneficial ownership rule, however, to learn more about reporting and compliance obligations, owners should see FinCEN's Small Entity Compliance Guide. FinCEN also has several resources available at fincen.gov/boi.

Other reforms include FinCEN issuing a Notice of Proposed Rulemaking (NPRM) to Combat Money Laundering and Promote Transparency in Residential Real Estate. The purpose of this rule is to provide protocols for reporting non-financed residential real estate transactions. The proposed regulation would impose reporting and recordkeeping requirements for real estate professionals involved in settlement services. The proposed rule would establish a cascading reporting approach and would primarily apply to title companies and attorneys as the professionals required to report. The rule would require reporting for transfers of residential real estate, and for non-financed residential real estate transactions. FinCEN sought comments on the proposed rule and will issue a final rule for the real estate sector. Additionally, it is likely that FinCEN will issue a proposed rule for the commercial real estate sector as well.

FinCEN seeks a more, and predictable framework for combating money laundering and terrorist financing involving real estate by seeking to replace the Geographic Targeting Orders (GTOs) which were implemented in 2016. The GTOs require title companies to identify natural persons with 25 percent or greater ownership interest in a legal entity making a non-financed residential real estate purchase in certain jurisdictions. Under the GTOs title professionals are required to report certain The GTOs remain in effect with the most recent GTO effective until October 15, 2024. For more information, visit NAR's Issue Brief on theGeographic Targeting Orders (GTOs).

NAR continues to monitor anti-money laundering and counterterrorism developments impacting the real estate industry and will continue to provide updates and guidance.

Current Legislation/Regulation (bill number or regulation)

Global Targeting Orders (GTOs)

Legislative Contact(s):

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Regulatory Contact(s):

NAR Issue Summaries

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