

Coalition for Integrity

February 21, 2022

Mr. Himamauli Das
Acting Director
Financial Crimes Enforcement Network
U.S. Department of the Treasury
P.O. Box 39
Vienna, VA 22183

Submitted electronically via <http://www.regulations.gov>

Dear Acting Director Das:

RE: Anti-Money Laundering Regulations for Real Estate Transactions

Docket #: FINCEN-2021-26549; RIN: 1506-AB54

This letter responds to Financial Crimes Enforcement Network's (FinCEN) request for comment on the advance notice of proposed rulemaking (ANPRM) on potential requirements under the Bank Secrecy Act (BSA) for certain persons involved in real estate transactions to collect, report, and retain information. Coalition for Integrity (C4I) appreciates the opportunity to comment on the proposed rulemaking.

Coalition for Integrity is a non-partisan 501(c)(3) organization. We work with a broad network of individuals and organizations to combat corruption and promote integrity in the public and private sectors both in the United States and internationally.

We welcome Financial Crimes Enforcement Network's (FinCEN) Advance Notice of a Proposed Rulemaking on extending Bank Secrecy Act (BSA) requirements to collect, report, and retain information on certain persons participating in real estate transactions involving non-financed purchases of real estate.¹ We support the efforts of the U.S. Treasury and specifically FinCEN's efforts to address the need to address the use of U.S. real estate by foreign kleptocrats to launder illicitly obtained money.

There have been several investigations that have showcased the use of real estate to launder money.

¹ FinCEN, 86 Fed. Reg. 69,589 (Dec. 8, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-12-08/pdf/2021-26549.pdf>.

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- A report by Global Financial Integrity (GFI) found that more than US \$2.3 billion was laundered through U.S. real estate in cases reported between 2015 and 2020.²
- The New York Times' 2016 series, "Towers of Secrecy",³ illustrated the ease with which it is possible to spend millions of dollars on anonymous real estate transactions facilitated by the real estate industry.
- This lack of due diligence by the real estate industry was also highlighted in the 2010 report⁴ issued by the U.S. Senate Permanent Sub-Committee on Investigations, which showed how foreign kleptocrats and their close associates were undermining U.S. anti-money laundering controls to bring funds into the United States that may have been the product of foreign corruption.
- More recently, the IMDB scandal, showed the ease with which private individuals were allegedly able to siphon off more than \$3.5 billion from the wealth fund of Malaysia and go on a high-end luxury shopping spree which included real estate and hotels in New York and Los Angeles.⁵ It also highlighted how gatekeepers such as the real estate industry, played a supporting role (sometimes unwittingly) in the alleged wrongdoing.

The lack of due diligence by the real estate industry into buyers' identities and the sources of their funds companies allows corrupt politicians and organized crime to transfer and hide illicitly acquired funds worldwide and fuel an abuse of power and a culture of impunity. This also diverts resources from those they should benefit. It is clear that the real estate sector is well positioned to detect schemes that use real estate to conceal the true source, ownership, location or control of funds generated illegally. Therefore, Financial Crimes Enforcement Network (FinCEN) should repeal the temporary exemption granted in 2002 to certain financial institutions,⁶ including

² Lakshmi Kumar & Kaisa de Bel, Areas of Money Laundering: Why U.S. Real Estate is a Kleptocrat's Dream 4 (2021), <https://secureservercdn.net/50.62.198.97/34n.8bd.myftpupload.com/wp-content/uploads/2021/08/Acres-of-Money-Laundering-Final-Version-2021.pdf?time=1645044694>.

³ A Summary: *The Hidden Money Buying Condos at the Time Warner Center*, NY TIMES (Feb. 7, 2015), https://www.nytimes.com/2015/02/08/nyregion/the-hidden-money-buying-up-new-york-real-estate.html?_r=0.

⁴ U.S. Senate Permanent Subcommittee on Investigations, *Keeping Foreign Corruption Out of the United States: Four Case Histories*, Washington, D.C.: GPO, February 2010, www.gpo.gov/fdsys/pkg/CHRG-111shrg56840/pdf/CHRG-111shrg56840.pdf.

⁵ Richard L. Cassin, *What Did the Alleged IMDB Looters Buy with \$1 Billion? Here's the List*, FCPA BLOG (July 20, 2016, 5:08 PM), <https://fcpablog.com/2016/7/20/what-did-the-alleged-1mdb-looters-buy-with-1-billion-heres-t/>.

⁶ Under 31 U.S. Code § 5312 (2), persons involved in real estate closings and settlements are considered financial institutions, https://www.law.cornell.edu/uscode/text/31/5312#a_2.

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persons involved in real estate closings and settlements, from the PATRIOT Act requirement for implementation of anti-money laundering programs.

Repealing the temporary exemption granted in 2002 would put an affirmative obligation on the real estate sector to conduct customer due diligence. It would bring the United States in line with the Financial Action Task Force (FATF) Recommendation 22. Recommendation 22 states that designated non-financial businesses and professions such as real estate agents should have the customer due diligence and record-keeping requirements set out in FATF Recommendations 10, 11, 12, 15, and 17.⁷ Coalition for Integrity's earlier letter in 2015 also urged FinCEN to do the same.⁸

We understand that FinCEN already has real estate geographic targeting orders, or GTOs, in place, which require title insurance companies to identify and report individuals using cash above a certain threshold to buy real estate property in the U.S. through shell companies in several places.⁹ However, the GTOs are not a permanent solution. Deficiencies in the current framework include:

1. The GTOs are temporary and must be renewed every six months. This may have the unintended consequence of creating uncertainty about renewal, which could drive the responsible companies to stop short of investing resources in compliance.
2. The GTOs focus on residential real estate and fail to address the money laundering risks that exist in commercial real estate. The 1MDB case illustrates this risk.
3. The GTOs have limited geographic reach and do not extend to the entire country.
4. The GTOs have a dollar threshold, and money laundering can occur through purchase and sale of multiple properties that individually have lower amounts.
5. For GTOs, title insurance companies have reporting obligations, but it is important to note that title insurance is not required in every cash transaction. This creates blind spots in the reporting regime ripe for exploitation.

⁷ FIN. ACTION TASK FORCE, INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION 19 (2021).

⁸ Letter from Shruti Shah, Vice President of Transparency International-USA to Jennifer Shasky Calvery, Dir. FinCEN (Mar. 10, 2015) (on file with Coalition for Integrity, <https://www.coalitionforintegrity.org/news-room/advocacy-work/>).

⁹ FIN. CRIMES ENF'T NETWORK, U.S. DEP'T OF THE TREASURY, GEOGRAPHIC TARGETING ORDER (2021), <https://www.fincen.gov/news/news-releases/fincen-renews-real-estate-geographic-targeting-orders-12-metropolitan-areas>.



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6. The GTOs have required reporting for transactions conducted through a narrow set of entities, failing to improve the transparency of transactions through, for example, trusts.

The most adequate way to address the problem of real estate money laundering would be require the real estate industry to implement anti-money laundering programs and to have the customer due diligence and record-keeping requirements. This would also have the benefit of preventing dirty money from being laundered through U.S. real estate. The GTOs focus on identification of beneficial owners and are a critical first step but do not prevent illicit money from entering the United States. If FinCEN instead proposes an expansion of the GTO requirements it should at a minimum propose a rule that includes the following elements:

1. A disclosure regime should be a permanent and extended to the entire country.
2. It should apply to both residential and commercial real estate.
3. It should not provide a monetary reporting threshold for transactions.
4. It should recognize that any effective internal control has multiple checks and balances, and hence should not focus on just title insurance companies and assign responsibilities to multiple professionals involved in the real estate closing and settlement chain.
5. It may be prudent to add a requirement of identifying beneficial ownership of the seller as well the buyer, as well as information on the sources of funds.
6. It should address transfers of ownership that may otherwise not constitute a sale.
7. A rule should assess risk and consider requiring reporting for legal entities like trusts, foundations, and any other associations or entities, as well as natural persons, that conduct real estate transactions.

Over the years, the United States has committed to enhancing its anti- money laundering regime transparency in several different fora. Addressing the money laundering in the U.S. real estate sector will send a strong message that U.S. is taking the necessary steps to uphold its commitments, and we thank you in advance for your continued action.

Please do not hesitate to contact me at sshah@coalitionforintegrity.org if you have any questions.

Sincerely,

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President & CEO



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