

## Possible New AML Regulations for Real Estate Sector Will Require Extra Diligence

Recently proposed regulatory changes and legislation indicate that the United States is seeking to upgrade its anti-money laundering (AML) regime, and that the real estate sector in particular almost certainly needs to prepare for new requirements and reporting obligations under the Bank Secrecy Act (BSA). The Financial Crimes Enforcement Network (FinCEN) launched an Advance Notice of Proposed Rulemaking (ANPRM) in December 2021 to solicit public comment on potential requirements under the BSA for certain individuals and entities involved in real estate transactions. Coupled with recently introduced legislation in the Senate, the Kleptocrat Liability for Excessive Property Transactions and Ownership ([KLEPTO](#)) Act, the developments indicate that the US real estate industry and those involved in the sector should proactively reevaluate their risk appetites and update their compliance processes.

### Real Estate Money Laundering in the United States: Current Situation

Money laundering through US real estate purchases by individuals and LLCs alike continues to be a prime layering mechanism that facilitates concealment of illicit assets. According to a recent [report](#) from the Washington DC thinktank, Global Financial Integrity (GFI), between 2015 and 2020, at least \$2.3 billion was laundered through US real estate, but that number is almost certainly much higher.

In April, FinCEN [renewed](#) its [geographic targeting orders](#) (GTOs)—the agency’s response to significant money-laundering risks in the real estate sector—that have required title insurance companies since 2016 to identify the natural persons behind shell companies used in real estate cash transactions. This 12<sup>th</sup> renewal of the GTO expands the requirements to additional jurisdictions in the United States to include parts of Washington, DC, Northern Virginia, and Maryland, as well as additional Hawaiian Islands and the city and county of Baltimore.

The GTOs have proven a useful tool for law enforcement, giving agencies the ability to compare GTO-reported legal entities with suspicious activity reports (SARs) filed by banks and financial institutions. In its [Advisory to Financial Institutions and Real Estate Firms and Professionals](#) in 2017, FinCEN noted that “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.” Although title agents and real estate professionals are not required to file SARs, this advisory emphasizes their importance in efforts to combat criminal activities, providing a possible additional justification to impose BSA reporting requirements on the real estate sector.

- Banks and money services businesses are the primary source of filed SARs, and the lack of BSA reporting requirements for the real estate sector provides a loophole for those wishing to launder illicit funds that the GTOs have been working to mitigate. The Treasury Department’s 2022 [National Strategy](#) for Combating Terrorist and Other Illicit Financing specifically stresses weak or nonexistent reporting and disclosure requirements for company formation and non-financed real estate transactions as vulnerabilities that the United States must address to mitigate the use of real estate in money laundering.

Currently, money launderers can evade reporting requirements by purchasing real estate outside of the applicable counties and keeping cash amounts under the current reporting threshold. In response to the ANPRM, the National

Association of Realtors (NAR) [recommends](#) that “FinCEN [should] require nationwide reporting of BOI [Beneficial Ownership Information] similar to the reporting requirement imposed under the GTOs,” and that “there should be no minimum monetary threshold for BOI reporting for non-financed deals.” Other organizations have suggested expanding the GTOs across the United States, including GFI which recommended “a permanent and nationwide regime” in [its response](#) to the ANPRM.

We assess that the current GTOs, which must be renewed every six months, are limited to residential real estate, and apply to only 13 jurisdictions in the United States, are only part of the battle against the use of the real estate sector to hide and launder assets. The proposed FinCEN regulations and possible additional legal measures pending in Congress will almost certainly help close the loopholes that allow malign actors to access and exploit the US financial system.

- Possible changes proposed in FinCEN’s ANPRM include removing reporting thresholds, expanding reporting requirements to all cash transactions nationwide, and including commercial real estate in the reporting requirements.
- Approximately \$463 billion in 2021 residential real estate transactions will “likely proceed without any [anti-money laundering] reporting obligations,” according to FinCEN, leaving “a substantial portion of the real estate market” unprotected from the risks posed by potential money launderers. To mitigate the problem, FinCEN could apply AML reporting obligations to all segments of the real estate sector.

Politically exposed persons (PEPs) and sanctioned individuals can hide behind complex legal entities and integrate misappropriated funds into the US financial system via real estate transactions. Disclosure of ultimate beneficial ownership is key to helping combat money laundering and sanctions evasion. The Corporate Transparency Act (CTA), implemented in January 2021, requires LLCs at their inception to disclose their beneficial owners to a national registry. The KLEPTO Act, introduced April 2022, would require beneficial ownership disclosure for all legal entities involved in real estate transactions.

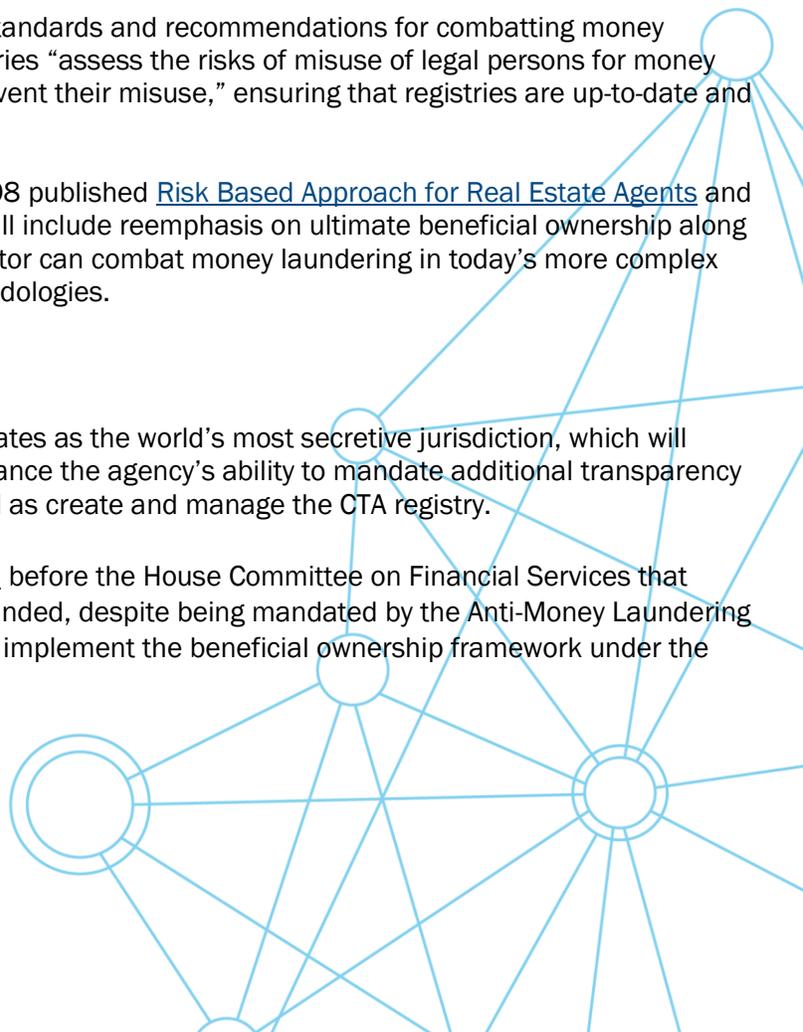
The Financial Action Task Force (FATF), which sets global standards and recommendations for combatting money laundering and terrorist financing, [recommends](#) that countries “assess the risks of misuse of legal persons for money laundering or terrorist financing, and take measures to prevent their misuse,” ensuring that registries are up-to-date and accurate.

FATF in 2008 also requested public consultation on its 2008 published [Risk Based Approach for Real Estate Agents](#) and has begun making updates to this guidance, which likely will include reemphasis on ultimate beneficial ownership along with new specifics on how individuals in the real estate sector can combat money laundering in today’s more complex and challenging money-laundering environment and methodologies.

## Regulatory Environment: The Challenges

The [Tax Justice Network](#) this year designated the United States as the world’s most secretive jurisdiction, which will likely prompt Congress to boost FinCEN’s resources to enhance the agency’s ability to mandate additional transparency and reporting and provide funds for additional staff, as well as create and manage the CTA registry.

- Acting FinCEN director Him Das last month [testified](#) before the House Committee on Financial Services that many of the agency’s staffing requests remain unfunded, despite being mandated by the Anti-Money Laundering Act (AMLA) of 2020, including personnel needed to implement the beneficial ownership framework under the CTA, enforcement personnel, and others.



- Senators Sheldon Whitehouse (D-RI) and Chuck Grassley (R-IA) last month sent Senate appropriators a [bipartisan request](#) to provide FinCEN with maximum possible funding to support implementation and enforcement of key AML and anticorruption reforms.
- The \$40 billion aid package to Ukraine that was [approved](#) last month included \$52 million in emergency funds to help FinCEN meet the requirements of the CTA and the AMLA.

Although new FinCEN regulations and resources almost certainly will help mitigate money laundering in real estate, the lack of infrastructure in the sector to handle new AML requirements presents a challenge. Leading trade organizations, the [American Land Title Association](#) (ALTA) and the [National Association of Realtors](#) (NAR) recently revealed that most of their thousands of members and member organizations, which vary in size from small to large, would not have the investigative tools or resources to comply with AML/CFT regulations under the BSA.

- According to [ALTA](#), members spend between \$45 - \$250 per transaction to research the beneficial owner(s) in compliance with the current GTOs—a cost that is usually passed on to the customer. ALTA also notes that “63% of title companies have five or less employees and 94% have less than 20 employees.” ALTA noted that imposing an AML requirements on title companies that are similar to financial institutions would be unnecessarily costly and burdensome.
- NAR also [notes](#) that most individual states have not invested in proper AML education or formal training on AML/CFT issues. Lack of current education and training infrastructure would make compliance with new BSA requirements difficult for realtors and brokers.

We judge that current GTO requirements and possible future AML obligations for professions in the real estate sector will require expert research into ownership and control structures by risk and compliance experts with foreign language capabilities and jurisdictional knowledge. FiveBy’s expert certified AML/CFT and global sanctions analysts can help clients craft a bespoke solution to help identify beneficial owners, money laundering, and sanctions evasion methodologies to help professions in the real estate sector more effectively comply with US laws and regulations.

