By electronic submission (via the Federal E-rulemaking Portal)

April 15, 2024

Ms. Andrea Gacki
Director
Financial Crimes Enforcement Network
U.S. Department of the Treasury
P.O. Box 39
Vienna, VA 22183

Re: Anti-Money Laundering Regulations for Real Estate Transactions, RIN 1506-AB54, Docket No. FINCEN-2021-0007

Dear Director Gacki,

As organizations that work to promote accountability in government and combat corruption and the abuse of power, we appreciate the opportunity to provide comments on the Financial Crimes Enforcement Network's ("FinCEN") Notice of Proposed Rulemaking ("NPRM") to combat and deter money laundering in the U.S. residential real estate sector by increasing transparency.[1] We offer these brief comments to highlight our key recommendations for a strong, effective, and practicable final rule. As FinCEN works to develop that final rule, please consider us partners in that effort.

The exploitation of U.S. real estate, especially by corrupt foreign officials, is now notorious and well-documented, with high-profile examples of such abuse revealing the alarming and enduring extent of the problem. Through such schemes, kleptocrats and other corrupt actors steal from their people and impoverish their home countries. Just last year, for example, the U.S. Department of Justice announced the resolution of two civil cases brought under the Kleptocracy Asset Recovery Initiative that resulted in the forfeiture of luxury assets purchased with the proceeds of foreign corruption. The conduct involved Nigerian businessmen who conspired to pay bribes to Nigeria's former Minister for Petroleum Resources, with lucrative oil contracts steered toward the defendants, and the illicit proceeds, totaling more than $100 million, laundered in the U.S. and "used to purchase various assets through shell companies, including luxury real estate in California and New York." In addition to using illicit proceeds to *acquire* real estate, that real estate was then used as collateral to further finance and obtain loans for the shell companies controlled by the defendants.[8]

Through this rulemaking, FinCEN can finally help disrupt such corrupt schemes and fortify the integrity of the U.S. financial system.

On the whole, we commend FinCEN's proposed rule ("Draft Rule") for including many positive aspects, including establishing *nationwide* and *permanent* anti-money laundering ("AML") requirements for transfers of residential real estate that involve a legal entity, regardless of the value of the transfer; for establishing a "cascading" order for identifying *who*—based on activity, not profession—must perform those AML obligations; for rejecting several of the higher-risk exemptions included in the beneficial ownership reporting rules created by the Corporate Transparency Act ("CTA"); and for incorporating the CTA's

[1] *See* Financial Crimes Enforcement Network, "Anti-Money Laundering Regulations for Residential Real Estate Transfers," Feb. 16, 2024, https://www.federalregister.gov/documents/2024/02/16/2024-02565/anti-money-laundering-regulations-for-residential-real-estate-transfers.

definition of "beneficial owner" in the Draft Rule. We also commend FinCEN for indicating that it will develop a specific real estate report form for electronic filing. We strongly urge FinCEN to maintain each of these aspects of the Draft Rule in its final rule.

However, the Draft Rule falls short in two essentials ways that may prevent it from effectively identifying and targeting illicit funds in the U.S. real estate sector. First, it would only apply to residential—and not *commercial*—real estate transfers. And second, while the Draft Rule's cascading order will ensure more effective and generative filing and recordkeeping requirements, it unfortunately would not require the reporting person to (1) collect a photocopy of an identifying document for the beneficial ownership information provided to them, as well as verify, or at least review for "clear error," all such information; (2) conduct customer due diligence on the transferee(s) (purchaser); (3) collect information about the source(s) of wealth used by the transferee(s); (4) if a transfer involves an entity created, or a trust formed, in the U.S., document the state in which it was registered or formed; and (5) document whether the transfer involved a PEP. **We strongly urge FinCEN to remedy each of these issues in its final rule.**

The dangers of money laundering, including the laundering of the proceeds of corruption, extend across the U.S. financial system and the more than $50-trillion U.S. real estate market. An unchecked market provides lucrative investments for corrupt networks, and distorts markets that, in turn, erode communities and disadvantage U.S. homebuyers. The comments presented here, if reflected in the final rule, will provide American law enforcement with the information necessary to hold corrupt and criminal actors accountable.

If you have any questions, please contact Scott Greytak, Director of Advocacy for Transparency International U.S. Thank you for the opportunity to present these comments.

Respectfully submitted,

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Fourth Branch Action
Friends of Angola
Global Financial Integrity
Indivisible Santa Fe
Integrity Initiatives International
International Institute for Ethical Governance and Accountability
La Liga de Ciudades de Puerto Rico
Michiganders for Fair & Transparent Elections
NETWORK Lobby for Catholic Social Justice
People Power United
Project On Government Oversight (POGO)
Projects for Democracy
Public Citizen
Revolving Door Project
Rise Economy
Sembrando Sentido
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UK Anti-Corruption Coalition

Walking To Fix Our Democracy

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