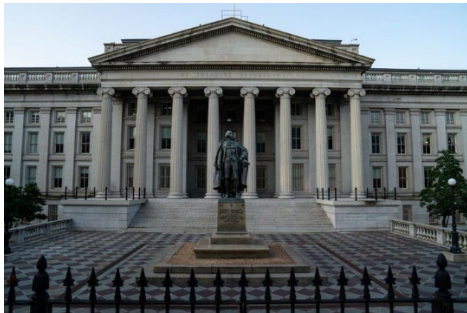


Analysis

# FinCEN Kicks Off New Era Of AML Compliance For Real Estate

By [Valentina Pasquali](#) · Oct 4, 2022, 3:55 PM EDT

Real estate pros who own or control corporate entities now have a hard deadline to disclose their personal information to the federal government after the U.S. anti-money laundering watchdog last week finalized [a beneficial ownership rule](#) that had been pending for nearly a year.



The Treasury Department's [Financial Crimes Enforcement Network](#) has implemented a new rule requiring legal entities to submit the personal information of owners that meet certain criteria. (Kent Nishimura / [Los Angeles Times](#) via Getty Images)

The new requirement, which the [U.S. Department of the Treasury's](#) Financial Crimes Enforcement Network implemented pursuant to the Corporate Transparency Act, targets corporations, limited liability companies, certain trusts, and other domestic and foreign entities registered in the U.S. regardless of the business sectors in which they operate.

However, the real estate industry featured prominently on FinCEN's agenda during the rulemaking process, with the bureau also developing [a real estate-specific](#) anti-money laundering framework amid growing concerns in Washington that foreign kleptocrats, sanctions evaders and other criminals have secretly stashed their illicit fortunes in U.S. residential and commercial properties.

"FinCEN has for several years expressed concerns about the real estate

sector and has other proposals outstanding," said Matthew Bisanz, a partner in [Mayer Brown LLP's](#) financial services regulatory and enforcement practice. "This is broader than real estate, and it does not target all real estate transactions, but real estate is front of mind for FinCEN, and I think we can expect this new rule to have a significant impact on the sector."

Beginning on Jan. 1, 2024, existing legal entities will have one year to submit to FinCEN the personally identifying information of any owner that holds a 25% or larger stake, as well as anyone else that has significant input over their strategic direction.

Legal entities incorporated after that date will have 30 days to file, the same timeframe reserved for all companies regardless of age to update the filings following changes in corporate structure.

The attorneys who spoke to Law360 for this article diverged on just how much of a heavy lift the final rule represents for real estate professionals that come in its crosshairs.

However, they agreed the industry needs to pay extra attention to the new requirement's "control prong," which does not set out a bright line like the 25% ownership threshold, but rather encompasses "anyone who is able to make important decisions on behalf of the entity."

That's a departure from FinCEN's own customer due diligence rule, which was finalized in May 2016 and has, since May 2018, required financial institutions to collect similar beneficial ownership information from their corporate clients.

That requirement, which the bureau is now slated to revise under the Corporate Transparency Act, included the same 25% ownership formula, but the control criteria only mandated LLCs to identify one senior manager.

"If you are creating an LLC or other legal entity that's going to be covered by

the Corporate Transparency Act, you will already have been in the position, almost surely, of having to provide your beneficial ownership information to a bank to open up an account," said Peter Hardy, a former federal prosecutor who co-leads [Ballard Spahr LLP's](#) anti-money laundering team.

"So, yes, this is new and there are additional compliance costs, but I don't want to overstate the change in the real world," Hardy added. "Having said that ... one of the biggest things about this is the expansion of the control prong ... it is very broad ... and depending on the complexity of the entity, or conversely how broadly and commonly authority is shared ... it can cover a lot of people."

Bank holding companies, insurance firms and corporations that employ more than 20 full-time staff and have more than \$5 million in gross receipts or sales are exempt from the reporting requirement, along with 20 other types of legal entities.

FinCEN estimated in issuing the final rule that compliance will cost companies that have "simple management and ownership structures" — a category the bureau expects to be prevalent among filers — some \$85 each to fill out and submit their initial beneficial ownership form.

Larger, more complex firms, as well as professionals who manage real estate LLCs for clients, face many multiples of that, according to Mayer Brown's Bisanz.

"If you are working at some kind of real estate investment firm, and you are managing investments for high-net worth individuals, you may not have a stake in the entity that is holding the real estate ... yet you are technically a senior executive of this real estate holding vehicle," he told Law360. "If you are a company that has maybe 70 or 80 entities in your portfolio, and you have the person who is the signer on the bank account leave, then you have to go update all 70 or 80 entities to put in the new control person."

FinCEN has yet to release the form or lay out step-by-step instructions for filing, both of which the bureau must tackle in rulemaking before the ball starts rolling in January 2024.

In the next 15 months, real estate professionals and their attorneys should comb through the details of the final rule and its follow-ups, whenever those are issued, and develop efficient processes and procedures to comply, Deborah Meshulam, who co-leads [DLA Piper's](#) securities enforcement practice, said.

"Practically speaking, you have to think about reasonable good faith and being able to support your decision to exclude [certain individuals] from those who have substantial control, even if they have a fancy title," Meshulam told Law360. "There is now this time, and it makes sense to go through the rule, understand the obligations and what still remains to be done."

The data will ultimately inform a national registry that FinCEN is still developing. The registry will provide access to a range of federal, state and local officials, and even financial institutions, which the bureau is also required to outline in forthcoming rules.

FinCEN's overall transparency efforts, as well as its real estate-specific push, aim in particular to support law enforcement in piercing the veil of corporate secrecy that often stops investigations in their tracks when they hit the wall of anonymous shell companies.

A day before it issued its notice of proposed rulemaking on beneficial ownership in December 2021, the bureau also published an early-stage regulatory pitch seeking public input on the best way to expand broader anti-money laundering obligations to the real estate industry.

For more than six years, FinCEN has also maintained a rolling requirement on

title insurance firms to identify and report the individuals behind legal entities that make all-cash purchases of high-value residential properties in more than a dozen metropolitan areas.

Depending on when the beneficial ownership registry becomes operational, and on whether the bureau advances and finalizes an anti-money laundering framework for real estate, industry professionals might see an increase in law enforcement inquiries, according to Ballard Spahr's Hardy.

"There will be more knocks on doors ... especially with regard to subpoenas for information, but that's also a relative statement," he told Law360. "While it's true that for many years the federal government ... has indicated a growing interest in real estate transactions, it's also true that, relatively speaking, and I want to stress that relative, there aren't that many enforcement cases or prosecutions involving real estate, particularly considering the size of the industry."

--Editing by Philip Shea.