



# Jeopardy Question: Rates and Leaves -- Answer: What Are Things That Are Dropping?

September 30, 2024

## Table of Contents:

- [FinCEN Issues Final Rule Designed to Combat Money-Laundering in Residential Real Estate Transactions: Money It's a Gas, Grab That Cash With Both Hands and Make a Stash](#)
- [Cadwalader Finance Forum: Commercial Real Estate Agenda and Speakers Announced!](#)
- [Celebrating Cadwalader's Renovated Headquarters](#)
- [Recent Transactions](#)

## Jeopardy Question: Rates and Leaves -- Answer: What Are Things That Are Dropping?

### FinCEN Issues Final Rule Designed to Combat Money-Laundering in Residential Real Estate Transactions: Money It's a Gas, Grab That Cash With Both Hands and Make a Stash



By **Steven M. Herman**  
Senior Counsel | Real Estate

As part of an effort to combat money laundering in United States residential real estate transactions, the Financial Crimes Enforcement Network bureau of the United States Department of the Treasury ("**FinCEN**") issued a final rule on August 29, 2024 creating reporting requirements for certain persons involved in **non-financed** transfers of residential real property (the "**Rule**"). The Rule will be effective as of December 1, 2025 (the "**Effective Date**"). The Rule was issued after FinCEN solicited feedback to the proposed rule that it issued on February 16, 2024 (the "**Proposed Rule**"), which we summarized in a prior [article](#). In addition to the discussion of the Rule below, we have also highlighted changes between the Proposed Rule and the Rule.

### What Is "Residential Real Property"?

Under the Rule, "residential real property" fits into one of the following four categories:

- (i) real property located in the United States containing a structure designed principally for occupancy by one to four families;
- (ii) land located in the United States on which the transferee intends to build a structure designed principally for occupancy by one to four families;
- (iii) a unit designed principally for occupancy by one to four families within a structure on land located in the United States; or
- (iv) shares in a cooperative housing cooperation for which the underlying property is located in the United States.

The Proposed Rule had included vacant land zoned, or for which a permit had been issued, for the construction of a one to four family structure. The Rule modified the Proposed Rule by removing the question of zoning and permitting, and instead focuses on intent of the transferee.

### What Is a "Non-Financed Transfer"?

Under the rule, a "non-financed transfer" means a transfer that does not involve an extension of credit to the transferees that is (i) secured by the transferred residential real property; and (ii) extended by a financial institution that has an obligation to maintain an anti-money laundering program and an obligation to report suspicious transactions pursuant to FinCEN regulations.

### What Constitutes a Reportable Transfer?

Under the Rule, all non-financed transfers of residential real property to any entity or trust (with certain exceptions) must be reported. Non-financed transfers of residential real property to individuals are not a reportable transfer.

Note that certain non-financed transfers of residential real property are not considered reportable, such as transfers in connection with a death, divorce or bankruptcy, and transfers for no consideration made by individuals to a spouse or to a trust established by such individuals.

The Rule expanded and clarified the scope of reportable transfers included in the Proposed Rule so that all transfers resulting from death (whether by will, trust, operation of law, or by contractual provision), transfers supervised by any United States court, and transfers in connection with the dissolution of a civil union are not reportable transfers.

### Who Must Report the Transfer?

Under the Rule, the following persons are responsible for reporting a reportable transfer:

- (i) the person listed as the closing or settlement agent on the closing or settlement statement for the transfer;
- (ii) if no such person as described in (i) above is involved in the transfer, then the person that prepares the closing or settlement statement for the transfer;
- (iii) if no such person described in (i) or (ii) above is involved in the transfer, then the person that files the deed with the recording office or other instrument that transfers ownership of the residential real property;
- (iv) if no such person described in (i), (ii) or (iii) above is involved in the transfer, then the person that underwrites an owner's insurance title policy for the transferee, such as a title insurance company;
- (v) if no such person described in (i), (ii), (iii) or (iv) above is involved in the transfer, then the person that disburses in any form, the greatest amount of funds in connection with the transfer; or
- (vi) if no such person described in (i), (ii), (iii), (iv) or (v) above is involved in the transfer, then the person that prepares the deed, or if no deed is involved, any other legal instrument that transfers ownership of the residential real property, including with respect to shares in a cooperative housing corporation, the person who prepares the stock certificate;

Any reporting person included in the above list may designate its reporting obligations to any other person on the list by written agreement. Note, however, a separate designation agreement is required for each reportable transfer. A reporting person cannot simply enter into a "standing" or "permanent" agreement with another reporting person to indefinitely designate reporting its reporting duties to such other reporting person.

The Rule largely adopted the language from the Proposed Rule and the changes in the Rule are for clarification of language included in the Proposed Rule.

## What Gets Reported?

### Transferee Information

For each *entity transferee* involved in a reportable transfer, the reporting person must report, as applicable, such transferee entity's name, trade name, principal place of business, IRS TIN, foreign tax identification number, and entity registration number.

If the entity transferee does not have an IRS TIN, foreign tax identification number or an entity registration number issued by a foreign jurisdiction, then the reporting person must also report, as applicable, for each beneficial owner of the transferee entity, full legal names, dates of birth, addresses, citizenship, IRS TIN, foreign tax identification numbers, passport numbers.

The reporting person must report similar information from each individual signing on behalf of the entity transferee.

For each *transferee trust* involved in a reportable transfer, the reporting person must report, as applicable, the legal name of the agreement establishing the trust, the date of the trust, any unique identifying number, whether the trust is revocable, trade name, principal address, IRS TIN, and foreign tax identification number.

The reporting person must also report similar information from an individual trustee of the trust (which is considered a beneficial owner for the purposes of the Rule) and from each individual signing on behalf of the transferee trust.

### Transferor Information

For each individual or entity transferor involved in a reportable transfer, the reporting person must report, as applicable, the name, date of birth, address, trade name, unique identifying number such as an IRS TIN or tax identification number used by a foreign jurisdiction, and passport number.

For an entity transferor that is a trust, in addition to the above, the reporting person must also report the name of the trust, the date of the trust, and identifying information with respect to the trustee of the trust.

### Property and Payment Information

The reporting person must report the street address and legal description of the residential real property together with the closing date.

The reporting person must also report the amount of the payment, the method by which payment was made, where the payment came from if it was held at a financial institution, the name of the payor if it is someone other than the transferee entity or transferee trust, and the total consideration paid by the transferee entity or transferee trust and all consideration paid by *all transferees* in connection with the reportable transfer.

The Rule clarifies the requirements in the Proposed Rule regarding the reporting of unique identification numbers (such as tax identification and entity registration numbers) so that a unique identification number is only required to be reported to the extent one has been issued to the transferee entity or trust. The requirements in the Proposed Rule regarding the reporting of payments have remained fundamentally the same.

## **What Are the Diligence and Inquiry Requirements Applicable to Reporting Persons?**

Reporting persons may rely on information provided by transferors and transferees, absent knowledge that would reasonably call into question the reliability of the information being provided to the reporting person.

For *identifying information regarding the transferee*, the reporting person may rely on information provided by the transferee or a person representing the transferee in the reportable transfer, absent knowledge of facts that would reasonably call into question the reliability of the information being provided to the reporting person, if the person providing the information certifies the accuracy of the information to best of the person's knowledge.

The adoption of the reasonable reliance standard in the Rule is probably the most significant change from the Proposed Rule. The Proposed Rule was silent as to whether and to what extent a reporting person could rely on information provided by other persons.

## **How Does Filing Work and When Must Reporting Persons File?**

A report regarding the reportable transfer must be prepared by the reporting person and filed electronically with FinCEN within the later of (i) the final day of the month following the date of closing and (ii) 30 calendar days after the date of closing.

The Proposed Rule required reporting no later than 30 calendar days after the date of closing.

## **What Are the Penalties for Violating the Reporting Requirements?**

*Negligent violations* of the Rule are subject to a civil penalty of not more than \$1,394 for each violation, and an additional civil penalty of up to \$108,489 for a pattern of negligent activity.

*Willful violations* of the Rule are subject to imprisonment of up to 5 years or a criminal fine of up to \$250,000, or both. Willful violations may also be accompanied by a civil penalty, the amount of which is the greater of (a) the amount involved in the transaction (with a cap of \$278,937) and (b) \$69,733.

FinCEN did not develop a penalty structure specific to the Rule. The penalty structure is generally in line with any violation of a FinCEN Bank Secrecy Act requirement and did not change from what was included in the Proposed Rule.

## **What Does This All Mean?**

Since 2016, FinCEN has been attempting to address money laundering in non-financed transfers of residential real property through targeting reporting requirements called the Residential Real Estate GTOs (the "**GTOs**"), which have been covered by previously issued articles. The GTOs targeted certain geographic areas of the United States, including New York City, Los Angeles, San Francisco, San Diego, Miami, Las Vegas, Boston, Chicago, and Baltimore, among others. Although FinCEN has periodically updated the GTOs, the agency believed that it was time for a permanent *nationwide* reporting requirement for non-financed transfers of residential real property, especially since nearly 61% of federal money laundering cases between 2016 and 2021 involving real estate were not covered by the GTOs.

The implementation of the Rule will build on and expand the scope of the GTOs:

- Reporting requirements will no longer apply only to certain geographies. Reportable transactions anywhere in the United States will be subject to the Rule.

- Transaction size thresholds will no longer apply. Under the GTOs, reporting requirements are triggered only if the purchase price of the property is \$300,000 or more for all targeted jurisdictions (except Baltimore, where it is \$50,000). Under the Rule, any non-financed transfer of residential real property to an entity or trust will be subject to the Rule's reporting requirements, regardless of the size of the transaction.
- The definition of "residential real property" has been broadened. Under the Rule, "residential real property" will also include land purchased with the intent to build one to four residential units on it.
- The universe of persons responsible for reporting has been expanded. Under the GTOs, reporting obligations fall on title insurance companies, their subsidiaries, and agents. The Rule will implement a "cascading" approach to determine who the reporting person is in order to capture a larger group of persons that may be involved in the closing and settlement of the transfer.
- The Rule specifically addresses and applies to transfers to trusts, in addition to entities such as limited liability companies or partnerships. The GTOs do not apply to trusts.
- The Rule broadens and expands the scope of information required to be provided by transferees beyond what is required by the GTOs, including tax identification numbers (domestic and/or foreign) and principal business addresses.

We will continue to monitor these developments.

## **Jeopardy Question: Rates and Leaves -- Answer: What Are Things That Are Dropping?**

### **Cadwalader Finance Forum: Commercial Real Estate Agenda and Speakers Announced!**

We're very excited to share details of the commercial real estate agenda and speakers for Cadwalader's 8th Annual Finance Forum on Wednesday, October 23, in Charlotte.

This premier event brings together industry leaders and experts for a day of networking and insightful discussions on the latest market trends and opportunities across various sectors, including commercial real estate.

Our Commercial Real Estate & Securitization track features a dynamic array of speakers who will share a market update and lead in-depth conversations on CRE bridge lending, loan sales, workouts and much more.

Click [here](#) for more information, including how to register for this signature firm event.

## **Jeopardy Question: Rates and Leaves -- Answer: What Are Things That Are Dropping?**

### **Celebrating Cadwalader's Renovated Headquarters**

On September 24, we had a terrific gathering in our New York office on Tuesday evening to celebrate the opening of our new "Cafe 1792" space on the second floor of our renovated 200 Liberty Street headquarters. Check out some [photos](#) from the event.

## **Jeopardy Question: Rates and Leaves -- Answer: What Are Things That Are Dropping?**

### **Recent Transactions**

Cadwalader's real estate group represented a syndicate of nine lenders through two separate mortgage loan financings in the aggregate amount of \$4 billion that was secured by 39 multifamily properties in 11 states that were each ultimately disposed of in CMBS bond offerings. The \$4 billion CMBS financing package was takeout financing for a syndicated balance sheet financing provided by the same group of lenders to finance, in part, the take private acquisition of a publicly treated REIT.