

April 16, 2024

Ms. Andrea Gacki  
Director  
Financial Crimes Enforcement Network  
P.O. Box 39  
Vienna, VA 22183

Re: Anti-Money Laundering Regulations for Residential Real Estate Transfers  
Docket Number FINCEN-2024-0005 [RIN 1506-AB54]

Dear Director Gacki:

The Worldwide Employee Relocation Council (WERC) greatly appreciates the opportunity to comment on the proposed rule (Proposed Rule) issued by Financial Crimes Enforcement Network (FinCEN) on February 16, 2024, entitled "Anti-Money Laundering Regulations for Residential Real Estate Transfers."

WERC is the professional association for global talent mobility. WERC comprises over 4,000 corporate and service provider members around the world and represents the individuals and organizations that oversee and implement the movement of employees globally employment purposes, including for relocation programs occurring within their home country or to/from an international destination.

WERC and its members ask FinCEN to adopt, in its final regulations of the Proposed Rule, the same exception which is contained in the Beneficial Ownership regulations. Specifically, we urge FinCEN to apply the exemption provision contained in 31 CFR 1010.380(d)(3)(ii) which exempts as a beneficial owner "An individual; acting as nominee, intermediary, custodian, or agent on behalf of another individual." This action would preserve existing practices within FinCEN's Residential Real Estate Geographic Targeting Order (GTO) program for employee relocation-related residential home transactions involving short-term engagement of a custodian entity due to U.S. tax protection considerations.

### **Background on U.S. Employee Relocation-Related Transactions**

The cost for the employee (Transferee) being relocated to sell their home is qualified for tax protection pursuant to Rev. Ruling 72-339 and 2005-74 by affording cost savings for a compliant home sale program which requires that the employer purchase, either independently or through a relocation management company, an employee's home at market value. This results in two separate and distinct transactions: one between the Transferee and the employer/custodian for the employer and another one between the employer/custodian and the third-party buyer. In the first transaction, employers extend funds to purchase the home from the Transferee. This is a non-financed transaction.

## **Potential Impacts of Proposed Rule on Employee-Related Relocations**

The Proposed Rule seeks to require certain persons involved in real estate closings and settlements to submit reports and keep records on identified, non-financed transfers of residential real property to specified legal entities and trusts on a nationwide basis. While FinCEN has required title insurance companies to report certain cash transactions by virtue of its direction under existing GTOs, FinCEN has previously confirmed that the initial transaction between the employer/custodian and the Transferee, which is typically a cash transaction, were not subject to the GTO reporting requirements due to embodiment of this transaction in a relocation context and its temporary nature.

It is unclear from the Proposed Rule whether the transaction between the Transferee and the employer, described above, would be exempt from such reporting. In the final Beneficial Ownership regulations, FinCEN recognizes that an “individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual” does not mean that such an individual is a beneficial owner for FinCEN reporting purposes (31 CFR 1010.380(d)(3)(ii)).” We ask FinCEN to adopt, in its final regulations of this Proposed Rule, the same exception which is contained in the Beneficial Ownership regulations.

In most relocation transactions, the employer or their designated nominee do not take legal title to the Transferee’s home. Specifically, the property is deeded directly from the Transferee to the new buyer. However, the transfer of real estate process is different state-by-state. Certain states require that a deed from the Transferee/taxpayer to the employer or nominee be recorded and thereafter, a second deed, from the employer or nominee to the new buyer, be recorded.

The initial transfer from the Transferee to the employer should be exempt from reporting under the final regulations because the transfer would be in keeping with the spirit of the previous interpretation by FinCEN for intermediaries or agents from being covered for reporting purposes. Including an exemption provision for “an individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual” in the final regulations would be consistent with FinCEN’s existing requirements and practices and provide critical clarity and certainty of process and requirements for U.S. employers and their various partners involved in residential real estate-related transactions for transferring employees.

## **Additional Comments on Proposed Rule**

Additionally, WERC urges FinCEN to set a minimum financial threshold for reporting in order to better define the requirements and parameters for compliance by various entities. We would recommend establishing a \$1 minimum transaction amount for triggering required reporting. Excluding gratuitous or zero-dollar transfers would not only reduce operational and cost burdens for both FinCEN and reporting entities but would also ensure that law enforcement agencies can more effectively focus their compliance and monitoring efforts.

Further, WERC also urges FinCEN to exempt entities that are already required to report to FinCEN under the Corporate Transparency Act as the information provided would be redundant placing an additional unnecessary reporting burden on WERC members.

Thank you for your consideration and please let us know if you have questions or require additional information from us. I can be reached by email at [mjackson@worldwideerc.org](mailto:mjackson@worldwideerc.org) or phone at 703-842-3400.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael T. Jackson", written in a cursive style.

Michael T. Jackson  
Vice President, Member Engagement and Public Policy