

## **Authority and Issuance**

For the reasons set forth in the preamble, chapter X of title 31 of the Code of Federal Regulations is proposed to be amended by adding part 1031 to read as follows:

### **PART 1031 - RULES FOR PERSONS INVOLVED IN REAL ESTATE CLOSINGS AND SETTLEMENTS**

#### **Subparts A - B [Reserved]**

#### **Subpart C - Reports Required to be Made by Persons Involved in Real Estate Closings and Settlements**

Sec.

1031.320 Reports of residential real property transfers.  
1031.321 [Reserved]

Authority: 12 U.S.C. 1829b, 1951–1959; 31 U.S.C. 5311–5314, 5316–5336; title III, sec. 314 Pub. L. 107–56, 115 Stat. 307; sec. 701 Pub. L. 114-74, 129 Stat. 599; sec. 6403, Pub. L. 116-283, 134 Stat. 3388.

#### **Subparts A - B [Reserved]**

#### **Subpart C - Reports Required to be Made by Persons Involved in Real Estate Closings and Settlements**

##### **§ 1031.320 Reports of residential real property transfers.**

(a) *General.* A residential real property transfer as defined in paragraph (b) of this section (“reportable transfer”) shall be reported to FinCEN by the reporting person identified in paragraph (c) of this section. The report shall include the information described in paragraphs (d) through (i) of this section. Terms not defined in paragraph (j) of this section are defined in 31 CFR 1010.100. The report required by this section shall be filed in the form and manner, and at the time, specified in paragraph (k) of this section. Records shall be retained as specified in paragraph (l) of this section and are not confidential as specified in paragraph (m) of this section.

(b) *Reportable transfer.* (1) Except as set forth in paragraph (b)(2) of this section, a reportable transfer is a transfer to a transferee entity or transferee trust of an ownership interest in:

(i) Real property located in the United States containing a structure designed principally for occupancy by one to four families;

(ii) Vacant or unimproved land located in the United States zoned, or for which a permit has been issued, for the construction of a structure designed principally for occupancy by one to four families; or

(iii) Shares in a cooperative housing corporation where such transfer does not involve an extension of credit to all transferees that is:

(A) Secured by the transferred residential real property; and

(B) Extended by a financial institution that has both an obligation to maintain an anti-money laundering program and an obligation to report suspicious transactions under this

chapter. (2) A reportable transfer does not include a:

(i) Grant, transfer, or revocation of an easement;

(ii) Transfer resulting from the death of an owner of residential real property;

(iii) Transfer incident to divorce or dissolution of a marriage;

(iv) Transfer to a bankruptcy estate; or

(v) Transfer for which there is no reporting person.

(c) *Determination of reporting person.* (1) Except as set forth in paragraphs (c)(2) and (3) of this section, the reporting person for a reportable transfer is the person engaged within the United States as a business in the provision of real estate closing and settlement services that is:

(i) The person listed as the closing or settlement agent on the closing or settlement statement for the transfer;

(ii) If no person is described in paragraph (c)(1)(i) of this section, the person that prepares the closing or settlement statement for the transfer;

(iii) If no person is described in paragraph (c)(1)(i) or (ii) of this section, the person that files with the recordation office the deed or other instrument that transfers ownership of the residential real property;

(iv) If no person described in paragraph (c)(1)(i), (ii), or (iii) of this section is involved in the transfer, then the person that underwrites an owner's title insurance policy for the transferee with respect to the transferred residential real property, such as a title insurance company;

(v) If no person described in paragraph (c)(1)(i), (ii), (iii), or (iv) of this section is involved in the transfer, then the person that disburses in any form, including from an escrow account, trust account, or lawyers' trust account, the greatest amount of funds in connection with the residential real property transfer;

(vi) If no person described in paragraph (c)(1)(i), (ii), (iii), (iv), or (v) of this section is involved in the transfer, then the person that provides an evaluation of the status of the title; or

(vii) If no person described in paragraph (c)(1)(i), (ii), (iii), (iv), (v), or (vi) of this section 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.

(2) *Employees, agents, and partners.* If an employee, agent, or partner acting within the scope of such individual's employment, agency, or partnership would be the reporting person as determined in paragraph (c)(1) of this section, then the individual's employer, principal, or partnership is deemed to be the reporting person.

(3) *Designation agreement.* (i) The reporting person described in paragraph (c)(1) of this section may agree with any other person described in paragraph (c)(1) to designate such other person as the reporting person with respect to the reportable transfer. The person designated by such agreement shall be the reporting person with respect to the transfer.

(ii) A designation agreement shall be in writing, and shall include:

(A) The date of the agreement;

(B) The name and address of the transferor;

(C) The name and address of the transferee entity or transferee trust;

(D) Information described in in paragraph (g) identifying transferred residential real property;

(E) The name and address of the person designated through the agreement as the reporting person with respect to the transfer; and

(F) The name and address of all other parties to the agreement.

(d) *Information concerning the reporting person.* The reporting person shall report:

(1) The full legal name of the reporting person;

(2) The category of reporting person, as determined in paragraph (c) of this section; and

(3) The street address that is the reporting person's principal place of business in the United States.

(e) *Information concerning the transferee—(1) Transferee entities.* For each transferee entity involved in a reportable transfer, the reporting person shall report:

(i) The following information for the transferee entity:

(A) Full legal name;

(B) Trade name or "doing business as" name, if any;

(C) Complete current address consisting of:

(1) The street address that is the transferee entity's principal place of business; and

(2) If such principal place of business is not in the United States, the street address of the primary location in the United States where the transferee entity conducts business, if any; and

(D) Unique identifying number consisting of:

(1) The Internal Revenue Service Taxpayer Identification Number (IRS TIN) of the transferee entity;

(2) If the transferee entity has not been issued an IRS TIN, a tax identification number for the transferee entity that was issued by a foreign jurisdiction and the name of such jurisdiction; or

(3) If the transferee entity has not been issued an IRS TIN or a foreign tax identification number, an entity registration number issued by a foreign jurisdiction and the name of such jurisdiction;

(ii) The following information for each beneficial owner of the transferee entity:

(A) Full legal name;

(B) Date of birth;

(C) Complete current residential street address;

(D) Citizenship; and

(E) Unique identifying number consisting of:

(1) An IRS TIN; or

(2) Where an IRS TIN has not been issued:

(i) A tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or

(ii) The unique identifying number and the issuing jurisdiction from a non-expired passport issued by a foreign government; and

(iii) The following information for each signing individual, if any:

(A) Full legal name;

(B) Date of birth;

(C) Complete current residential street address;

(D) Unique identifying number consisting of:

(1) An IRS TIN; or

(2) Where an IRS TIN has not been issued:

(i) A tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or

(ii) The unique identifying number and the issuing jurisdiction from a non-expired passport issued by a foreign government to the individual;

(E) Description of the capacity in which the individual is authorized to act as the signing individual; and

(F) If the signing individual is acting in that capacity as an employee, agent, or partner, the name of the individual's employer, principal, or partnership.

(2) *Transferee trusts*. For each transferee trust in a reportable transfer, the reporting person shall report:

(i) The following information for the transferee trust:

(A) Full legal name, such as the full title of the agreement establishing the transferee trust;

(B) Date the trust instrument was executed;

(C) The street address that is the trust's place of administration;

(D) Unique identifying number, if any, consisting of:

(1) IRS TIN; or

(2) Where an IRS TIN has not been issued, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; and

(E) Whether the transferee trust is revocable;

(ii) The following information for each trustee that is a legal entity:

(A) Full legal name;

(B) Trade name or "doing business as" name, if any;

(C) Complete current address consisting of:

(1) The street address that is the trustee's principal place of business; and

(2) If such principal place of business is not in the United States, the street address of the primary location in the United States where the trustee conducts business, if any;

(D) Name and business address of the trust officer assigned to the transferee trust; and

(E) Unique identifying number consisting of:

(1) The IRS TIN of the trustee;

(2) In the case that a trustee has not been issued an IRS TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or

(3) In the case that a trustee has not been issued an IRS TIN or a foreign tax identification number, an entity registration number issued by a foreign jurisdiction and the name of such jurisdiction; and

(F) For purposes of this section, an individual trustee of the transferee trust is considered to be a beneficial owner of the trust. As such, information on individual trustees must be reported in accordance with the requirements set forth in paragraph (e)(2)(iii) of this section;

(iii) The following information for each beneficial owner of the transferee trust:

(A) Full legal name;

(B) Date of birth;

(C) Complete current residential street address;

(D) Citizenship;

(E) Unique identifying number consisting of:

(1) An IRS TIN; or

(2) Where an IRS TIN has not been issued:

(i) A tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or

(ii) The unique identifying number and the issuing jurisdiction from a non-expired passport issued by a foreign government; and

(F) The category of beneficial owner, as determined in paragraph (j)(1)(ii) of this section; and

(iv) The following information for each signing individual, if any:

(A) Full legal name;

(B) Date of birth;

(C) Complete current residential street address;

(D) Unique identifying number consisting of:

(1) An IRS TIN; or

(2) Where an IRS TIN has not been issued:

(i) A tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or

(iii) The unique identifying number and the issuing jurisdiction from a non-expired passport issued by a foreign government to the individual;

(E) Description of the capacity in which the individual is authorized to act as the signing individual; and

(F) If the signing individual is acting in that capacity as an employee, agent, or partner, the name of the individual's employer, principal, or partnership.

(3) *Collection of beneficial ownership information from transferees.* The reporting person may collect the information described in paragraphs (e)(1)(ii) and (e)(2)(iii) of this section from the transferee or a person representing the transferee in the reportable transfer, provided the transferee or their representative certifies in writing, to the best of their knowledge, the accuracy of the information.

(f) *Information concerning the transferor.* For each transferor involved in a reportable transfer, the reporting person shall report:

(1) The following information for a transferor who is an individual:

(i) Full legal name;

(ii) Date of birth;

(iv) Complete current residential street address; and

(v) Unique identifying number consisting of:

(A) An IRS TIN; or

(B) Where an IRS TIN has not been issued:



(1) A tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or

(2) The unique identifying number and the issuing jurisdiction from a non-expired passport issued by a foreign government to the individual;

(2) The following information for a transferor that is a legal entity:

(i) Full legal name;

(ii) Trade name or “doing business as” name, if any;

(iii) Complete current address consisting of:

(A) The street address that is the legal entity’s principal place of business; and

(B) If the principal place of business is not in the United States, the street address of the primary location in the United States where the legal entity conducts business, if any; and

(iv) Unique identifying number consisting of:

(A) An IRS TIN;

(B) In the case that the legal entity has not been issued an IRS TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or

(C) In the case that the legal entity has not been issued an IRS TIN or a foreign tax identification number, an entity registration number issued by a foreign jurisdiction and the name of such jurisdiction; and

(3) The following information for a transferor that is a trust:

(i) Full legal name, such as the full title of the agreement establishing the trust;

(ii) Date the trust instrument was executed;

(iii) Unique identifying number, if any, consisting of:

(A) IRS TIN; or

(B) Where an IRS TIN has not been issued, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction;

(iv) For each individual who is a trustee of the trust:

- (A) Full legal name;
- (B) Current residential street address; and
- (C) Unique identifying number consisting of:
  - (1) An IRS TIN; or
  - (2) Where an IRS TIN has not been issued:
    - (i) A tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or
    - (ii) The unique identifying number and the issuing jurisdiction from a non-expired passport issued by a foreign government; and
  - (v) For each legal entity that is a trustee of the trust:
    - (A) Full legal name;
    - (B) Trade name or “doing business as” name, if any;
    - (C) Complete current address consisting of:
      - (1) The street address that is the legal entity’s principal place of business; and
      - (2) If the principal place of business is not in the United States, the street address of the primary location in the United States where the legal entity conducts business, if any; and
    - (D) Unique identifying number consisting of:
      - (1) An IRS TIN;
      - (2) In the case that the legal entity has not been issued an IRS TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or
      - (3) In the case that the legal entity has not been issued an IRS TIN or a foreign tax identification number, an entity registration number issued by a foreign jurisdiction and the name of such jurisdiction.
- (g) *Information concerning the residential real property.* The reporting person shall report the street address, if any, and the legal description, such as the section, lot, and block, of each residential real property that is the subject of the reportable transfer.

(h) *Information concerning payments.* (1) The reporting person shall report the following information concerning each payment, other than a payment disbursed from an escrow or trust account held by a transferee entity or transferee trust, that is made by or on behalf of the transferee entity or transferee trust regarding a reportable transfer:

(i) The amount of the payment, consisting of the total consideration paid by the transferee entity or transferee trust;

(ii) The method by which the payment was made;

(iii) If the payment was paid from an account held at a financial institution, the name of the financial institution and the account number; and

(iv) The name of the payor on any wire, check, or other type of payment if the payor is not the transferee entity or transferee trust.

(2) The reporting person shall report the total consideration paid or to be paid by all transferees regarding the reportable transfer.

(i) *Information concerning hard money, private, and other similar loans.* The reporting person shall report whether the reportable transfer involved credit extended by a person that is not a financial institution with an obligation to maintain an anti-money laundering program and an obligation to report suspicious transactions under this chapter.

(j) *Definitions.* For purposes of this section, the following terms have the following meanings.

(1) *Beneficial owner*—(i) *Beneficial owners of transferee entities.* (A) The beneficial owners of a transferee entity are the individuals who would be the beneficial owners of the transferee entity on the date of closing if the transferee entity were a reporting company under 31 CFR 1010.380(d) on the date of closing.

(B) The beneficial owners of a transferee entity that is established as a non-profit corporation or similar entity, regardless of jurisdiction of formation, are limited to individuals

who exercise substantial control over the entity, as defined in 31 CFR 1010.380(d)(1) on the date of closing.

(ii) *Beneficial owners of transferee trusts.* The beneficial owners of a transferee trust are the individuals who fall into one or more of the following categories on the date of closing:

(A) A trustee of the transferee trust.

(B) An individual other than a trustee with the authority to dispose of transferee trust assets.

(C) A beneficiary who is the sole permissible recipient of income and principal from the transferee trust or who has the right to demand a distribution of, or withdraw, substantially all of the assets from the transferee trust.

(D) A grantor or settlor who has the right to revoke the transferee trust or otherwise withdraw the assets of the transferee trust.

(E) A beneficial owner of any legal entity that holds at least one of the positions in the transferee trust described in paragraphs (j)(1)(ii)(A) through (D) of this section, except when the legal entity meets the criteria set forth in paragraphs (j)(10)(ii)(A) through (P) of this section. Beneficial ownership of any such legal entity is determined under 31 CFR 1010.380(d), utilizing the criteria for beneficial owners of a reporting company.

(F) A beneficial owner of any trust that holds at least one of the positions in the transferee trust described in paragraphs (j)(1)(ii)(A) through (D) of this section, except when the trust meets the criteria set forth in paragraphs (j)(11)(ii)(A) through (D). Beneficial ownership of any such trust is determined under this paragraph (j)(1)(ii)(F), utilizing the criteria for beneficial owners of a transferee trust.

(2) *Closing or settlement agent.* The term “closing or settlement agent” means any person, whether or not acting as an agent for a title agent or company, a licensed attorney, real estate broker, or real estate salesperson, who for another and with or without a commission, fee, or other valuable consideration and with or without the intention or expectation of receiving a

commission, fee, or other valuable consideration, directly or indirectly, provides closing or settlement services incident to the transfer of residential real property.

(3) *Closing or settlement statement.* The term “closing or settlement statement” means the statement of receipts and disbursements for a transfer of residential real property.

(4) *Date of closing.* The term “date of closing” means the date on which the transferee entity or transferee trust receives an ownership interest in residential real property.

(5) *Ownership interest.* The term “ownership interest” means the rights held in residential real property that are demonstrated:

(i) Through a deed, for a reportable transfer described in paragraph (b)(1)(i) or (ii) of this section; or

(ii) Through stock, shares, membership, certificate, or other contractual agreement evidencing ownership, for a reportable transfer described in paragraph (b)(1)(iii) of this section.

(6) *Recordation office.* The term “recordation office” means any State, local, or Tribal office for the recording of reportable transfers as a matter of public record.

(7) *Residential real property.* The term “residential real property” means:

(i) Real property located in the United States containing a structure designed principally for occupancy by one to four families;

(ii) Vacant or unimproved land located in the United States zoned, or for which a permit has been issued, for the construction of a structure designed principally for occupancy by one to four families; or

(vi) Shares in a cooperative housing corporation.

(8) *Signing individual.* The term “signing individual” means each individual who signed documents on behalf of the transferee as part of the reportable transfer. However, it does not include any individual who signed documents as part of their employment with a financial institution that has both an obligation to maintain an anti-money laundering program and an obligation to report suspicious transactions under this chapter.

(9) *Statutory trust.* The term “statutory trust” means any trust created or authorized under the Uniform Statutory Trust Entity Act or as enacted by a State. For the purposes of this subpart, statutory trusts are transferee entities.

(10) *Transferee entity.* (i) Except as set forth in paragraph (j)(10)(ii) of this section, the term “transferee entity” means any person other than a transferee trust or an individual.

(ii) A transferee entity does not include:

- (A) A securities reporting issuer defined in 31 CFR 1010.380(c)(2)(i);
- (B) A governmental authority defined in 31 CFR 1010.380(c)(2)(ii);
- (C) A bank defined in 31 CFR 1010.380(c)(2)(iii);
- (D) A credit union defined in 31 CFR 1010.380(c)(2)(iv);
- (E) A depository institution holding company defined in 31 CFR 1010.380(c)(2)(v);
- (F) A money service business defined in 31 CFR 1010.380(c)(2)(vi);
- (G) A broker or dealer in securities defined in 31 CFR 1010.380(c)(2)(vii);
- (H) A securities exchange or clearing agency defined in 31 CFR 1010.380(c)(2)(viii);
- (E) Any other Exchange Act registered entity defined in 31 CFR 1010.380(c)(2)(ix);
- (F) An insurance company defined in 31 CFR 1010.380(c)(2)(xii);
- (I) A State-licensed insurance producer defined in 31 CFR 1010.380(c)(2)(xiii);
- (J) A Commodity Exchange Act registered entity defined in 31 CFR 1010.380(c)(2)(xiv);
- (K) A public utility defined in 31 CFR 1010.380(c)(2)(xvi);
- (L) A financial market utility defined in 31 CFR 1010.380(c)(2)(xvii);
- (M) An investment company as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a)) that is registered with the Securities and Exchange Commission (SEC) under section 8 of the Investment Company Act (15 U.S.C. 80a–8); and
- (N) Any legal entity whose ownership interests are controlled or wholly owned, directly or indirectly, by an entity described in paragraphs (j)(10)(ii)(A) through (O) of this section.

(11) *Transferee trust.* (i) Except as set forth in paragraph (j)(11)(ii) of this section, the term “transferee trust” means any legal arrangement created when a person (generally known as a settlor or grantor) places assets under the control of a trustee for the benefit of one or more persons (each generally known as a beneficiary) or for a specified purpose, as well as any legal arrangement similar in structure or function to the above, whether formed under the laws of the United States or a foreign jurisdiction. A trust is deemed to be a transferee trust regardless of whether residential real property is titled in the name of the trust itself or in the name of the trustee in the trustee’s capacity as the trustee of the trust.

(ii) A transferee trust does not include:

(A) A trust that is a securities reporting issuer defined in 31 CFR 1010.380(c)(2)(i);

(B) A trust in which the trustee is a securities reporting issuer defined in 31 CFR 1010.380(c)(2)(i);

(C) A statutory trust; or

(D) An entity wholly owned by a trust described in paragraphs (j)(11)(ii)(A) through (C) of this section.

(k) *Filing procedures--(1) What to file.* A reportable transfer shall be reported by completing a Real Estate Report and collecting and maintaining supporting documentation as required by this section.

(2) *Where to file.* The Real Estate Report shall be filed electronically with FinCEN, as indicated in the instructions to the report.

(3) *When to file.* A reporting person is required to file a Real Estate Report no later than 30 calendar days after the date of closing.

(l) *Retention of records.* A reporting person shall maintain a copy of any Real Estate Report filed by the reporting person and a copy of any certification described in paragraph (e)(3) of this section. In addition, all parties to a designation agreement described in paragraph (c)(3) of this section shall maintain a copy of such designation agreement.

(m) *Exemptions—(1) Confidentiality.* Reporting persons, and any director, officer, employee, or agent of such persons, and Federal, State, local, or Tribal government authorities, are exempt from the confidentiality provision in 31 U.S.C. 5318(g)(2) that prohibits the disclosure to any person involved in a suspicious transaction that the transaction has been reported or any information that otherwise would reveal that the transaction has been reported.

(2) *Anti-money laundering program.* A reporting person under this section is exempt from the requirement to establish an anti-money laundering program, in accordance with 31 CFR 1010.205(b)(1)(v). However, as provided in 31 CFR 1010.205(c), no such exemption applies for a financial institution that is otherwise required to establish an anti-money laundering program by this chapter.

**§ 1031.321 [Reserved]**