PolicyLink

April 16, 2024

Policy Division
Financial Crimes Enforcement Network, Department of Treasury
P.O. Box 39
Vienna, VA 22183

Re: Docket No. FINCEN-2024-0005 and RIN 1506-AB54, Anti-Money Laundering Regulations for Residential Real Estate Transfers

Dear Director Gacki,

PolicyLink applauds the Financial Crimes Enforcement Network (FinCEN) for taking necessary steps towards addressing the issues that local, state, and federal governments are facing in the residential real estate market, including rapid and high-volume shifts in ownership of housing stock that are difficult to trace and track. As residential real estate ownership structures continue to evolve, local jurisdictions often do not know who owns their housing stock. This has serious implications for tenants, prospective homebuyers, current homeowners, and local landlords who are impacted daily by absentee landlords that disrupt the fabric of our communities. We commend and affirm FinCEN's release of strong rules targeting illicit finance in U.S. residential real property, and appreciate the opportunity to comment on this NPRM to advance policies for the more than 100 million individuals, families, and children who experience financial insecurity to have guaranteed access to safe and affordable housing.[1]

In addition, PolicyLink would like to elevate how this proposed rule aligns with the whole-of-government call to action set forth by the Biden-Harris administration to advance equity for all, especially communities that have experienced persistent discrimination. As addressed in Executive Orders 13985 and 14091, federal agencies have been charged with the responsibility of identifying, addressing, and correcting existing policies and practices that have historically impeded equal opportunity. Given the racial wealth and homeownership gaps in the United States, gaining a clearer picture of who and what entities are participating in residential real estate transactions across the country will inform efforts to create housing policies and programs that prioritize property ownership and control for U.S. residents, especially for those who have faced historic and current barriers to accessing ownership.

Introduction

Single-family homes are the main vessel through which homeownership is achieved in the United States, but homeownership rates fell significantly during the aftermath of the foreclosure crisis. As households defaulted on their mortgages, investors swooped in to take advantage of a new asset class: single-family

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[1] PolicyLink. "100 Million and Counting: A Portrait of Economic Insecurity in America." (2019) https://www.policylink.org/resources-tools/100-million.

rentals. Between 2006 and 2013, the number of one-unit single-family rentals increased by 51.8%.[2] Over $20 billion was deployed by private equity firms and investors to purchase 200,000 single-family homes across the nation.[3] In the years that followed the foreclosure crisis, the United States experienced the acceleration of the financialization of housing, a process through which financial actors transformed the single-family market into a tool for profit – and for which tenants, prospective homebuyers and entire communities paid the price.

One harmful consequence of the financialization of single-family homes is that investors from outside communities are taking the place of households in reaping the benefits of homeownership. Instead of allowing residents and individual owners the opportunity to build wealth, private equity actors are extracting wealth from homes and their rental occupants. Furthermore, the property management practices of these institutional landlords are as predatory as one can imagine, using routine eviction filings as a part of a rent collection and late fee strategy, and incorporating excessive fees into leases.[4] To make things worse, research has shown that these investors target neighborhoods with larger populations of people of color, including low-income, racially diverse neighborhoods.[5] The ability of these buyers to mobilize capital quickly, and to make large cash offers, means they easily outcompete first-time homebuyers who may require loans to purchase their homes. This can further the racial wealth gap because affordable single-family homes are taken off the market, adding to the worsening affordable housing crisis.

The real estate transactions that have led to the increased concentration of single-family homeownership into the hands of private equity overwhelmingly result in ownership by unidentified buyers who hide behind LLCs. The lack of transparency in ownership structures and owner identities mean that neighbors don't know the owners entering their communities, and tenants don't know the landlords managing their homes. This obscurity in ownership is leveraged by private equity owners to neglect maintenance issues, increase fines and fees, and deploy predatory property management practices that prioritize profit over housing stability and tenant well-being.[6] It has become such a problem that non-profit organizations across the country have been compelled to create tools through which tenants can identify their landlords (e.g., Anti-Eviction Mapping Project, Who Owns What).

The financialization of residential real estate is a proven threat to housing stability for millions of Americans. In order to effectively disrupt this process, we must first gain a better understanding of the actors who are accumulating more and more of our housing market so that we may develop public policy interventions and solutions. This has already begun at the state and federal level, with proposed legislation such as Senator Brown's Stop Predatory Investing Act and Senator Merkeley's End Hedge Fund Control

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[2] Fields, Desiree. 2018. Constructing a new asset class: Property-led financial accumulation after the crisis. Economic Geography 94.2 (2018): 118-140.
[3] Right to the City Alliance. (2017). "Renting from Wall Street: Blackstone's Invitation Homes in Los Angeles and Riverside." https://homesforall.org/wp-content/uploads/2014/07/LA-Riverside-Blackstone-Report-071514.pdf.
[4] Raymond, Elora Lee, Richard Duckworth, Benjamin Miller, Michael Lucas, and Shiraj Pokharel. 2018. "From foreclosure to eviction: Housing insecurity in corporate-owned single family rentals." Cityscape 20 (3): 159-188.
[5] Immergluck, D. (2018). "Renting the Dream: The Rise of Single-Family Rentership in the Sunbelt Metropolis." Housing Policy Debate, 28(5), 814-829.
[6] "PESP Testifies with ACRE and Other Advocates at House Financial Services Hearing," July 26, 2022. Private Equity Stakeholder Project. https://pestakeholder.org/news/pesp-testifies-with-acre-and-other-advocates-at-house-financial-services-hearing/

of American Homes Act of 2023. FinCEN's proposed rule will support efforts to identify predatory actors, develop policy to halt their activity, and improve housing access for Americans. We support the proposed rule and have responded to the questions below to make recommendations for further strengthening the impact of the rule.

Responses to Specific Questions

Please see below for responses to questions posed by FINCEN:

27. Please provide comments on the proposed definition of beneficial owners of transferee entities.
We support the currently proposed definition of beneficial owners, and encourage FinCEN to seek alignment in its definition with other proposed legislation, specifically from California and New York, that aims to increase landlord transparency. We recommend comparing the definitions offered by California AB 889, California SB 1201, and New York S995B, detailed below:

- AB 889: a natural person for whom, directly or indirectly and through any contract arrangement, understanding, relationship, or otherwise, any of the following applies:
  (i) The person exercises substantial control over a qualified entity.
  (ii) The person owns 25 percent or more of the equity interest of a qualified entity.
  (iii) The person receives substantial economic benefits from the assets of a qualified entity.
- SB 1201: a natural person for whom, directly or indirectly and through any contract arrangement, understanding, relationship, or otherwise, either of the following applies with respect to a limited liability company or a foreign limited liability company:
  (i) The person exercises substantial control over the entity. For the purposes of this paragraph, "substantial control" has the same meaning as set forth in Section 1010.380 of Title 31 of the Code of Federal Regulations, as published in the Federal Register, Volume 87, Number 189, on September 30, 2022.
  (ii) The person owns 25 percent or more of the equity interest of an entity.
- S995B, which was signed into law in February 2024: with respect to an entity, an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise (i) exercises substantial control over the entity; or (ii) owns or controls not less than 25 percent of the ownership interests of the entity;

FinCEN should consider incorporating the 25% ownership interest component to align with state legislation for more streamlined and consistent reporting.

33. What are the benefits of the rule as proposed?
The primary benefit of the rule from the standpoint of housing advocates is that it has the potential to increase transparency in the residential real estate market. The current lack of data - or incomplete, unreliable, diffuse data - not only clouds local, state and federal government understanding of asset ownership, but prevents them from having the data to engage in sound policymaking. With increased transparency, we will be able to design policies and legislation that target predatory actions, begin the definancialization of housing as a profit-seeking commodity, and shift the benefits of ownership and housing stability back to the people who need it most: households that live and work in our communities. However, it is important to note that in order to fulfill its potential, the rule must ultimately outline the ways in which the ownership data that is collected is made available to the public. Transparency is only possible if this data is readily accessible to those most impacted by private equity.

40. Is the information FinCEN proposes to be reported regarding the description of the transferred property sufficient, over- or under-inclusive? What information should be added or removed and why?
The proposed rule would require the address of the relevant property, if applicable, and a legal description, such as the section, lot, and block. We believe additional information should be collected about transferred properties. Specifically, we recommend adding the following descriptive fields:

- "Whether the property receives federal or state tax credits or subsidies or is otherwise assisted under a federal or state housing program." This is an important addition because if federal or state housing subsidies are attached to the property, relevant agencies should be notified so that they may be proactive in ensuring compliance with programs and subsidies.
- "Whether the beneficial owner is part of a limited liability company or entity that owns 50 or more rental dwelling units." This is necessary to increase general awareness of large investors that are active in the residential real estate industry.
- "The contact information regarding a local emergency contact in the event the owner cannot be reached, such as for a property manager." In many circumstances, owners are inaccessible to tenants and lessees. This is especially problematic when properties are uninhabitable and require immediate action from owners to improve housing conditions.

Adding the recommended fields to reporting will greatly improve our understanding of the investor class in the real estate market and can lead to material benefits for residents of investor-owned properties.

50. This NPRM is focused on residential real estate. Do the same considerations for type of purchaser covered and professionals required to report apply to the commercial real estate sector?
In addition to single-family housing, investors have also financialized multi-family housing for profit purposes. In no other American city is this process more evident than New York City, where 2.3 million people rent in multifamily buildings of 5+ units. Between 2005 and 2009, private equity funds bought 100,000 units, or 10%, of New York City's rent-regulated housing stock.[7] Given the expansion of investor activity from single-family to multi-family housing, it is vital that FinCEN apply the same regulations to the commercial real estate sector - especially since 5+ unit housing is considered commercial real estate.

Thank you for your attention to this critical matter. We appreciate your consideration of the perspectives shared in this public comment as you evaluate policies and initiatives to address transparency in asset ownership. Please contact me at tram@policylink.org if you would like to speak with PolicyLink in more detail about our comment.

Sincerely,

Tram Hoang
Senior Associate, PolicyLink

[7] Fields, Desiree. "Contesting the financialization of urban space: Community organizations and the struggle to preserve affordable rental housing in New York City." Journal of Urban Affairs 37.2 (2015): 144-165.