

FinCEN Alert Could Mean Greater Scrutiny for CRE Markets



A new alert issued by the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN) is warning banks and other financiers to be on the lookout for potentially suspicious investments into US commercial real estate (CRE). FinCEN says some of these investments may be an attempt by Russian oligarchs to use CRE to move or hide funds and avoid international sanctions.

For CRE firms this means that there may be greater regulatory pressure, and greater scrutiny, in the cards.

Shoring Up 'Vulnerabilities'

FinCEN points out that there are "several vulnerabilities in the CRE market" that could be exploited to avoid sanctions, including the fact that CRE markets and transactions: "involve highly complex financing methods and opaque ownership structures that can make it relatively easy for bad actors to hide illicit funds in CRE investments."

Part of the challenge lies in the fact that CRE transactions often involve trusts, private companies and other legal entities as buyers and sellers, making it tricky to pin down ownership.

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Risks and Regulations

While it's not yet clear what specific requirements may be incoming, in a recent CoStar article on the matter, bank regulatory attorney, Dan Stipano noted that: "FinCEN has started a rulemaking process that would impose requirements to prevent money laundering on the commercial real estate industry."

He added that the process is still in the early stages, however, and that we don't know which aspects of the industry new regulations will target.

Ongoing Developments

The move to take a closer look at US CRE investments is part of a bigger trend of scrutinizing property markets across the globe. Back in December 2022, a FinCEN Financial Trend Analysis noted that CRE markets in Turkey and the United Arab Emirates had "become a safe haven" for this kind of illicit activity, and the UK National Crime Agency issued a broader "Red Alert" on sanction evasions in July.

Taken together, these moves add up to a global environment where CRE investments (and investors) may have a tougher time finding financing and completing the required diligence processes needed by increasingly cautious lenders.

That said, the good news is that the Commercial Real Estate Finance Council (CREFC) is also keeping a close eye on the situation and have noted that they are: "working with policymakers to educate them on the CRE finance markets, including how the industry works to prevent, detect, and report illicit activity."

