



September 9, 2025

The Honorable Warren Davidson
Chairman
House Financial Services Committee
Subcommittee on National Security, Illicit Finance, and International Financial Institutions
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Joyce Beatty
Ranking Member
House Financial Services Committee
Subcommittee on National Security, Illicit Finance, and International Financial Institutions
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Davidson, Ranking Member Beatty, and Members of the Subcommittee:

On behalf of the American Land Title Association (ALTA), I respectfully submit this letter for the record regarding the Financial Crimes Enforcement Network's (FinCEN) Anti-Money Laundering Regulations for Residential Real Estate Transfers Rule (the Rule). Given where the industry is from a readiness standpoint, the number of resources that have not been published by FinCEN, and industry questions and concerns that need to be addressed, we believe FinCEN should delay the effective date of this rule and return it to the drawing board to address the issues discussed in this letter.

The title industry is working diligently to get ready to implement the Rule on December 1. We have hosted thousands of hours of education, designed new materials and tools to aid compliance, and generated dozens of questions for FinCEN. Despite all this preparation, we are not confident that the industry will be ready by December 1, if for no other reason than FinCEN has not finalized the reporting form. This means no one has been able to do any testing or training with the actual process, and time is running out to do so effectively. With the current December 1 implementation date, the industry needs to start screening transactions and collecting data on October 1 given that many deals may have 60-day closing periods. That is less than one month from today's hearing.

While readiness is the most acute concern given the timing, the industry is also concerned about the burden this rule places on small businesses across the country. ALTA represents an industry comprised of more than 17,000 title insurance companies operating across the nation, with over 90% being small, family-owned businesses. Collectively, the title industry contributes

over \$30 billion annually to the U.S. economy and supports over 150,000 professionals—including title agents, underwriters, abstracters, and real estate attorneys—who play a unique role in promoting confidence in the real estate market by proactively identifying and resolving issues before closing, protecting consumers from fraud, and safeguarding the property rights of homeowners. The Rule imposes substantial costs and burdens upon title companies—particularly small businesses. FinCEN’s midpoint estimate for the cost of compliance with this Rule is \$559.4 million. Based on its estimate of 850,000 reports to be issued per year, this means title companies will bear roughly \$500 of additional expense per transaction that is reported.

While these numbers are excessive, they are doubly concerning because they are irrationally low. The Rule estimated three types of compliance costs: (1) costs to determine who should report, and to perform the reporting itself (inclusive of costs to collect and review the necessary information); (2) costs for reporting persons to train employees; and (3) costs related to recordkeeping. We believe that FinCEN severely underestimated the costs of implementing this complex rule including training, technology needs and staff time to collect, report and retain the required information. For example, FinCEN believes that since the final rule does not require the title company to retain the report after it’s filed that the cost of record keeping will be minimal (one hour of staff costs and ten cents of record processing). However, they fail to recognize that many reporting persons invariably will retain sensitive information, particularly if they wish to defend against downstream FinCEN claims of failure to file required reports. They therefore will incur substantial costs to ensure that customer information is safely obtained and stored securely. The information that the Rule requires to be maintained is the most sensitive information, namely the full legal name, address, citizenship, and IRS identification number (usually a Social Security Number) for an entity’s beneficial owners. This is the most valuable information for criminals and identity thieves, and the cost of protection is way more than ten cents per record.

The enormous size of the costs alone is concerning; however, it’s particularly challenging given the speculative nature of the Rule’s purported benefits. FinCEN attempts to justify the burdens of its industry cost estimates by purportedly quantifying the Rule’s otherwise intangible value to law enforcement and the public. Specifically, FinCEN states that “it might be inferred that a tacit expectation underlying this rulemaking is that the rule will generate intangible benefits worth over \$500 million per year.”¹ That number is untethered to any concrete reality or analytical process. It is unjust to place the immense burden of this rule on small businesses across the country when the purported benefits are speculative and unexplained.

Further, the information that this rule seeks to collect, the beneficial ownership information (BOI) of entities transferring residential real estate, has been deemed not valuable by FinCEN in its recent revision of the larger Beneficial Ownership Reporting Rule.² FinCEN also stated that the burden of reporting this information for domestic small businesses was too great and outweighed any benefit. Under the Anti-Money Laundering Regulations for Residential Real Estate Transfers Rule, title companies are being asked to collect this same information from the

¹ FinCEN, *Anti-Money Laundering Regulations for Residential Real Estate Transfers*, 89 Fed. Reg. 70258 (August 29, 2024)

² FinCEN, *Beneficial Ownership Information Reporting Requirement Revision and Deadline Extension*, 90 Fed. Reg. 13688, 13691 (March 26, 2025).

same entities that FinCEN deemed unjustified. Additionally, the other information, aside from the BOI, that would be collected under the Rule is already collected by other financial institutions. FinCEN could access this information from these institutions, instead of asking small title companies to spend money to collect this same information again.

ALTA has voiced concerns to FinCEN directly about the lack of preparedness ahead of December 1 but has received no indication that they intend to delay or reverse course. Attached you will find our comment letters to FinCEN throughout the rulemaking process. We believe that FinCEN should delay the implementation of the Rule and return it to the drawing board to ensure that any effort to combat money laundering in real estate is properly scrutinized to determine if the benefits truly outweigh the burdens placed on those responsible for complying.

Thank you for your attention to this important issue and for your continued leadership in supporting a stable and secure real estate market. The title insurance industry stands ready to work with Congress to support efforts that continue to combat criminal activity, protect consumers, and advance the American Dream of homeownership.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Morton".

Chris Morton
Chief Executive Officer
American Land Title Association

cc: The Honorable French Hill
The Honorable Maxine Waters

Enclosures:



April 16, 2024

Policy Division

Financial Crimes Enforcement Network

P.O. Box 39

Vienna, VA 22183

Re: Docket Number FINCEN- 2024-02565; RIN 1506-AB54: Anti-Money Laundering Regulations for Residential Real Estate Transfers

Director Gacki,

The American Land Title Association¹ (ALTA) shares the concern about the use of real estate for money laundering. However, we believe that aspects of Financial Crimes Enforcement Network's (FinCEN) proposed rule are overly burdensome and costly. In this comment letter, ALTA recommends a number of changes to the scope of the rule and data requested that will make this rule more effective and manageable for the person on whom the responsibility for reporting lies and improving the value of reports for law enforcement. Further, the recommended changes are designed to align the data sought by FinCEN in the proposal to data that is already available to title and settlement professionals or easier to obtain. Lastly, we request FinCEN provide guidance allowing agents and others obligated to report under the rule to submit incomplete reports without risk of penalty where there has been a good faith attempt to obtain the required information, but the parties have not been willing to provide it.

ALTA is the national voice of the title and settlement industry. The title and settlement industry protects homebuyers and homeowners through the safe transfer of real estate. According to the Small Business Administration, more than 90% of title companies are considered small businesses. Depending on the state, real estate settlement will usually be conducted by title professionals, escrow agents or attorneys.

These comments are guided by ALTA's experience with the Geographic Targeting Orders (GTOs) that have been in place since 2016. We appreciate the collaboration we've had with FinCEN in the GTO

¹ ALTA represents title insurers, title agents and attorneys that provide peace of mind to Americans by insuring their property rights and closing their real estate transactions. Our members range from small, one-county operations to large national title insurers in the United States. The mission of ALTA is to improve the skills and knowledge of providers in the real property transaction, effectively advocate member concerns, and standardize products for industry use.

effort. For this rule to be successful, continued collaboration will be needed to help effectively prepare the 16,000 title companies, the industry's 155,000 employees and 1.5 million real estate agent customers.

The Real Estate Transaction Process

While there are many hallmarks and similarities among real estate transactions across the country, the process can differ based on state and local customs and practices. This letter uses more general nomenclature. However, the reality is the closing process and verbiage is different among each state and even within a state.

The real estate transaction process starts with a seller (or transferor) contracting with a real estate agent to market their home for sale to the public through listing on a multiple listing service. Sellers can also elect to list their homes for sale by owner or through a nonpublic listing. A buyer will often be contractually represented by their own real estate agent. Both agents may conduct some due diligence on their clients related to their identity and will often obtain some verification of funds or financing from the buyer to determine their budget and the likelihood they will obtain credit if necessary to purchase the home. Since agents typically get paid from the proceeds of a completed sale, they are incentivized to ensure the sale will not fall through for lack of funds or other reasons such as the buyer being on the Specially Designated Nationals and Blocked Persons List or the seller's identity being fraudulent. Given the heightened awareness and risk for identity theft and seller impersonation fraud, this upfront diligence is critical. When a buyer finds a home to purchase, the agents will negotiate a price and other terms. Once those terms are accepted, a formal real estate purchase and sale agreement is executed.

A real estate purchase and sale agreement² is a written contract between the buyer and seller outlining the terms and conditions of a property sale. In residential real estate transactions, standard contracts are typically produced by state and local Realtor® associations. These contracts include dozens of conditions and contingencies including contingencies related to financing, appraisals, and status of title. They also establish any amount deposited with either the real estate agent or title company to serve as earnest money or a good faith deposit to show a buyer is serious. Relevant to this proposed rule, the contract will often state it is for a residential sale or whether there is a financing contingency. Most critically for this rule, that agreement also specifies a closing date. For all cash transactions, the period between contract execution and closing is typically very short and can be less than seven days. If any term of the agreement is not met (including closing not occurring on or before the set day), the parties can declare a breach and the seller may be able to cancel the contract and retain any earnest money deposit provided by the buyer.

The first time the title or settlement company gets involved is when the purchase and sale agreement is executed, and the parties open the file with the settlement provider. Settlement agents are the independent third party to the transaction whose only interest is to ensure the

² Compare https://virginiarealtors.org/wp-content/uploads/dlm_uploads/2018/12/Virginia-REALTORS-Form-600-Residential-Contract-of-Purchase-2019-07-Fillable.pdf and https://www.nvar.com/docs/default-source/pdfs/standardized-forms/2023-july-standard-forms-updates/k1321ed--residential-sales-contract.pdf?sfvrsn=7cd3690c_4

integrity of the transaction³. In the title industry, the terms “real estate closing” and “real estate settlement” are used interchangeably depending on local practice. Both terms refer to the process of executing legally binding documents transferring interests in real estate. The manner for conducting a real estate settlement varies depending on the locality. A closing agent is typically an attorney, or an employee of a title or escrow company. In roughly a dozen states, closing a real estate transaction is the practice of law. The closing agent acts as a neutral clearinghouse for the transaction, collecting all the necessary documentation, including the deed, mortgage (if applicable), title and homeowners’ insurance policies, payoffs (if there are liens on the property that must be released) and pest inspection reports, just to name a few of the many tasks performed. In many states, the settlement agent must be licensed by the state to perform these functions. This person also handles the exchange of monies, including any earnest money deposit, mortgage funds, and personal funds of the parties.

Once a file is opened by the title and settlement company, they will review the contract to determine any relevant timelines for contingencies and closing. They will also begin the process of determining title insurability either by conducting a title search (if they are a title company) or obtaining a title commitment (if they are a non-title attorney or escrow agent). The title company’s due diligence is focused on ownership and other interests related to the land. They will review public land records and work with the parties to obtain evidence suggesting the seller is the owner of the real property and has the capacity to transfer it to the buyer and that there are no outstanding debts or liens that must be resolved prior to the transfer. This process is focused on determining whether a title is marketable, and the investigation ends there. It does not require any due diligence regarding the buyer’s beneficial ownership or finances.

Once the title company determines its willingness to insure the title and all contingencies are satisfied, the settlement will be scheduled, and transaction documents will be drawn up. At settlement, the property is transferred by the execution and exchange of a number of documents, most notably a transfer instrument (called a deed), a document creating a lien (either called a mortgage or deed of trust depending on state real estate law), and some affidavits related to the requirements of the lender or title company. After the execution of documents, the settlement agent will forward payments related to the transaction including payoffs to previous lenders, other lien holders, tax collectors and municipalities. Additionally, the relevant transaction documents will then be submitted for recordation with the local land records office. This is necessary to perfect the exchanged interests against third parties under the system established pursuant to state recording acts. After recordation, final copies of the transaction documents and a title insurance policy will be transmitted to the customers.

This short overview of the real estate transaction process is intended to show that the only data relevant to the completion of the transaction is either contained in sales and purchase agreements or obtained from public land records. The only identity verification performed is through the notarial process to determine the authenticity of signatures on a document as needed under state real estate law. Settlement agents do not verify (nor do they have any ability to verify) the source of

³ *Citizens National Bank of Roswell v. Davisson*, 229 U.S. 213, 223 (1913); *Bell v. Safeco Title Ins. Co.*, 830 S.W.2d. 157 (Tex.App. 1992).

funds provided for settlement. Nor would they need to collect beneficial ownership of an entity acquiring title information for the purpose of underwriting the title insurance policy.

FinCEN's \$450 Million Cost Estimate is Both Overly Burdensome and Unfortunately Underestimated Based on Industry Experience

At the outset, we are concerned about the extremely high price tag of this proposed rule. FinCEN's economic analysis estimates this rule will cost our industry \$453.9 million annually (\$476.2 million in the first year). This comes out to almost \$500 per real estate report based on FinCEN's estimate that 850,000 reports will be filed annually. Those amounts are excessive both in total and on a per transaction basis. It is especially difficult to justify these high costs when the analysis can't estimate a corresponding economic benefit and states, "FinCEN is unable to quantify the economic benefits of the proposed rule."

As noted in the analysis, the settlement industry is small-business oriented. As previously noted, more than 90% of the industry qualifies as a small business under the Small Business Administration criteria. However, to put an even finer point on it, according to ALTA's membership data, roughly 93% of title companies have \$1 million or less in annual gross revenue. According to the Census Bureau, 80% have fewer than 10 employees.⁴ These extremely small businesses are not well positioned to absorb this additional cost.

While the rule is extremely costly, we believe the economic analysis does not capture the whole picture for the industry. FinCEN estimates initial year training costs at \$44.3 million or 75 minutes per employee.⁵ This is based on an estimate that each employee in a number of industries related to settlement will need over an hour of training to reach an understanding of compliance. Even with estimating these training costs, FinCEN's initial year cost estimates are too low.

Industry experience with implementing new rules, specifically TILA-RESPA Integrated Disclosures (TRID) in 2015, is that the employees will need two levels of training. First, employees will need at least 75 minutes to 120 minutes of training to learn the requirements of the rule. Then, depending on staffing decisions around completing reports, some staff will need specific hands-on training of at least two hours to learn how to complete the report properly. Additionally, the industry will need to conduct several one-hour training sessions for real estate agents both prior to the rule and within the first year to help smooth out the process. When factoring in these realities, the cost of upfront training is likely to more than double.

On the ongoing cost estimate, FinCEN doesn't estimate any necessary technology costs, but that is unrealistic. Given the scope of the rule, industry likely will need new code and technology to flag potentially reportable transactions and to collect sensitive data from customers. Since settlement agents will need to rely on real estate agent partners to collect much of the data, new technologies and processes will likely be necessary to reduce the risk of sensitive information being shared via potentially unsecured email. Additionally, the expanded requirement to collect and store sensitive

⁴ 2021: ECNSVY Business Patterns County Business Patterns

⁵ Department of the Treasury, Financial Crimes Enforcement Network, February 16, 2024, <https://www.federalregister.gov/documents/2024/02/16/2024-02565/anti-money-laundering-regulations-for-residential-real-estate-transfers>

personal information may lead the industry to face higher than average increases in cyber insurance and/or data protection technologies.

Recommendations for FinCEN

Below we provide several recommendations that will lower the expected cost and burden on industry while leading to higher quality and more useful data for law enforcement.

FinCEN Should Exempt Certain Low-Risk Transfers from the Rule

We suggest FinCEN alter the proposed rule to exclude a number of low-risk transactions such as gratuitous or zero-dollar transfers and estate planning transactions. Not only will this drastically reduce the number of potentially reportable transactions and thus the cost burden, but it will also ensure Real Estate Reports are more relevant to law enforcement. Further, reporting these transactions is likely duplicative since the mechanics of these deals mean that they are connected to another transfer that was subject to a mortgage company's or bank's AML obligations or Suspicious Activity Reporting.

Gratuitous transfers are transfers where there is little to no consideration paid for the exchange. They are more akin to a gift and often done to aid in tax planning, estate planning, charitable activity and converting use of a house for a business or rental.

Moreover, because the statutory authority for the proposed rule is the anti-money laundering obligations imposed by the Bank Secrecy Act on "persons involved in *real estate closings and settlements*,"⁶ it is unclear whether gratuitous estate-planning or charitable transactions fall within the scope of FinCEN's authority to impose reporting requirements. The plain meaning of a real estate "closing" or "settlement" is "the final transaction between the *buyer and seller*, whereby the conveyancing documents are concluded and the *money and property* transferred."⁷ In the absence of a mutual exchange of value between a grantor and grantee of an interest in real property, it is unclear whether such a transfer involves a real estate closing or settlement.

The most common example of a gratuitous transfer is the use of revocable trusts for estate planning. To avoid the cost and time-consuming nature of probate many homeowners will enact an estate plan where they place the real estate in a revocable trust shortly after acquiring it. Often these transactions happen very close in time to when the owner purchases the home with mortgage financing and goes through the mortgage company's AML process. This is a relatively common practice in states such as California, Florida and Nevada. Thanks to the limitations of the Garn St. Germain Act⁸, those properties are often encumbered by that mortgage financing. Given the revocable nature of the trust, the owner will have to remove the property from the trust any time they wish to refinance or take out additional debt.

These transactions present lower money laundering risks because they go through additional layers of review during the mortgage process. These properties were originally purchased in the name of

⁶ 31 U.S.C. § 5312(a)(2)(U) (emphasis added), first added to the BSA by the Anti-Drug Abuse Act of 1988, § 6185, P.L. 100-690, 102 Stat. 4354–4355.

⁷ *Closing*, BLACK'S LAW DICTIONARY (10th ed. 2014) (emphasis added) (noting that "closing" is "also termed *settlement*").

⁸ Garn St. Germain Act, Congressional Record, 1983 <https://www.congress.gov/bill/97th-congress/house-bill/6267>

an individual and are still controlled by that individual. As the proposed rule notes, sales to natural persons are not the focus of this rule. While not every county has electronic deed record access, there are a number of commercial data services that provide digital access for the majority of the country. When law enforcement is investigating a property that is owned by a revocable trust, they will know its settlor—that is, the person who created and controls the trust—because they can find the prior deed to see the true owner.

Further, since the underlying home was first purchased using mortgage financing and likely still has some outstanding mortgage, law enforcement will be able to contact the servicer to obtain more information. Also, given the need to move the property in and out of a trust or entity for various financing purposes, there is a high risk that there would be duplicate or triplicate reports filed involving the same parties and properties, thereby reducing the effectiveness of the data for law enforcement.

More generally, requiring information about the beneficiaries of a revocable trust is likely of dubious law enforcement value. Notably, a revocable trust is “the functional equivalent of a will.”⁹ It is therefore an “ambulatory” instrument, which means that, like a will, it is capable of being unilaterally modified by the settlor of the trust at any time, including changing its beneficiaries or revoking the trust entirely.¹⁰ Settlers of most revocable trusts are the sole or primary beneficiaries. As noted above, their identity is already a matter of public record at the time they deed the property to the trust. However, a settlor as the ability to change the trust beneficiaries at any time after the precise moment of any real estate “closing” or “settlement” in which the trust was created. Thus the proposed rule will be ineffective to identify any beneficiaries to the trust named after that time.

Another example is the need for a corrective title document. Often, if a title company discovers a title defect, that company will attempt to fix the issue by filing new deeds or other documents in the public land records. For example, if there is a mistaken acknowledgment that accompanies the deed, a new deed will be prepared, executed and recorded to correct the mistake. This could result in a transaction being reported twice.

ALTA suggests two changes to the rule to address this specific issue. First, FinCEN should add a nominal dollar threshold (such as \$1,000) since a majority of these transactions are gratuitous. As we have said previously, a single national price is easier to implement than differing thresholds across the country. However, having no threshold unnecessarily brings into coverage these low-risk gratuitous transfers.

Second, FinCEN should amend § 1031.320(b)(2) to include exemptions for both a transfer where the transferor is the managing or sole member of a transferee entity and a transfer where the transferor is the settlor of a transferee trust. We suggest adding the following exclusions to § 1031.320(b)(2)

- A transfer where the transferor is the managing or sole member of a transferee entity;
- A transfer where the transferor is the settlor of a transferee trust;

⁹ Unif. Trust Code, Art. 6, General Comments (Unif. L. Comm’n 2023) (already enacted in 35 states and the District of Columbia); Restatement (3d) of Trusts §§ 25, 63.

¹⁰ *Id.* §§ 602(a), 603.

- The recordation of a deed or other document in the public record to correct an error in an existing public record or a cloud on the title;
- A transfer where the transferee is a qualified intermediary for purposes of 26 USC § 1031.

FinCEN Should Eliminate the Need to Report Redundant Information

We believe FinCEN's guiding principle in finalizing this rule should be to only require the reporting person to report information that is traditionally collected in the process of the real estate transaction. There are four areas where FinCEN should reduce the cost and burden of reporting by altering its requirements in a manner that will improve law enforcement's ability to utilize the data.

First, FinCEN should remove the requirement to report beneficial ownership information (BOI) that is already being collected by FinCEN pursuant to the Corporate Transparency Act (CTA). Our experience with the GTOs shows that the collection of BOI is the most burdensome and costly part of this rule. BOI data is also the riskiest data to store. This is especially concerning given that FinCEN is already collecting this data.

Under the proposed rule, the reporting person must collect and report BOI data for transferee and transferor entities. As FinCEN notes, "where possible, FinCEN has aligned the proposed rule's definitions of beneficial ownership with those contained in the CTA and its implementing regulations."¹¹ The definitions of who qualifies as a beneficial owner and the exemptions for entities not subject to reporting requirements are essentially identical. Thus, it's hard to see how this obligation will yield law enforcement any additional information than they already possess.

Further, the BOI data submitted by the entity pursuant to CTA would be more helpful to law enforcement because its accuracy is governed by additional safeguards and legal obligations on the people forming the entities and is subject to being updated over time.

ALTA believes that eliminating the reporting of BOI data or allowing the reporting of a FinCEN ID, if available, in lieu of BOI reporting, would reduce the burden on industry while providing law enforcement with more useful data. This would also seem to better comply with the intent of the CTA, which requires FinCEN to reduce the burden of due diligence rules in light of the establishment of the BOI collection system.

Second, FinCEN should alter the trust reporting requirement to align with the data typically found on a trust certificate issued under state law. Under the Uniform Trust Act¹² promulgated by the Uniform Law Commission and enacted in 35 states, a trustee is authorized to issue a certification of trust containing much of the information sought under this proposed rule. While the form can differ in each state, the certification of trust¹³ includes basic information about the trust like the trust's name and date of execution, trustee's name and authority, and settlors' personal information. The trustee issues a certification under penalty of perjury much like the affidavit

¹¹ 89 FR 12434

¹² <https://www.uniformlaws.org/committees/community-home?CommunityKey=193ff839-7955-4846-8f3c-ce74ac23938d>

¹³ See generally, VA. CODE (1950) § 64.2-804.

contemplated under proposed § 1031.320(e)(3). We suggest that FinCEN amend proposed 1031.320(e)(2) to state, “For each transferee trust in a reportable transfer, the reporting person shall report the information provided by the trustee on a certification of trust issued under the law of state where the real property is located or the following information.”

Third, FinCEN should alter the payments related information required under 320(h) to align with the information typically provided by a financial institution, such as a receipt of a wire transfer. Under the proposed rule, the reporting person must provide the total purchase price for the real estate and the amount, method, financial institution, payor and account number for each individual payment accepted for settlement.

State laws limit the types of payment methods settlement agents can accept when conducting a real estate transaction. Under those state “good funds” laws, the settlement agent can only accept funds that have fully and irrevocably settled and collected into their account. This typically limits settlement agents to requiring payments be made via wire transfer or cashier’s checks, with wire transfers being the most common payment method. When a settlement agent receives a wire transfer the receipt provided by their financial institution does not provide all of the data requested under this proposed rule. While the items provided on the receipt vary, they typically include only the name of the payor, the originating bank, and the input/output accountability data (IMAD/OMAD) or a Federal Reserve reference number. Notably, if the sender’s account number is provided, then it is normally redacted to the last four digits. Likewise, when a cashier’s check is used, the underlying remitter’s bank account that is used to pay the bank is not typically provided.

Since settlement agents only accept payments via banking products that are already subject to anti-money laundering programs, it’s hard to envision the value of providing this data as part of this proposed rule. However, it’s additionally burdensome when the payment information is not limited to the information available from the settlement agent’s financial institution following deposit. We suggest limiting 320(h) to just the amount of total consideration paid. If some payment information is necessary, it should be limited to the information obtained from the face of a check or the originating bank’s name and the IMAD/OMAD or reference number for a wire transfer or ACH.

Fourth, ALTA recommends eliminating the reporting of seller or transferor data under this proposal. It’s unclear why this data would be valuable to law enforcement. If a seller is an individual, their identity would be indicated in the public land records since they would be listed on the deed. Since these records are easily accessible by law enforcement using commercial services called title plants, the value of additional reporting beyond their name under this proposed rule is questionable. For sellers that are entities, the requirements are also duplicative since their BOI data will be in FinCEN’s BOI system and a report will have been filed when they bought the home. For these reasons, we recommend removing the transferor reporting requirements under 320(f) or limiting them solely to the reporting of the transferor’s name and address.

Other Sections Where FinCEN Should Clarify the Rule’s Obligations

Beyond alterations to the underlining rule requirements, we recommend the following changes to the rule’s language to make the proposal easier for reporting persons to understand and utilize.

First, FinCEN should update 320(b)(1) to utilize the definition of the term “residential real property” under (j)(7). As currently drafted (b)(1) is confusing and contains typographical errors. Further, it is odd to have a definition of residential real property and not use it in the proposed rule’s core coverage provision.

Additionally, we believe the core provision of 320(b)(1) needs to limit the determination of whether a property is residential to the information contained in the real estate purchase contract. Under the proposed rule, a property is residential if it contains a structure built for 1-4 family usage or is vacant land for which a permit has been issued for the construction of a structure built for 1-4 family usage. Whether or not a property is residential (per the rule’s definition) is not relevant for the issuance of a title insurance policy or the closing of the loan. It is not something that would become apparent from a standard title search and is typically only gleaned either from the purchase contract or the mortgage documents. Likewise, the definition for “vacant land” hinges on the issuance of a permit or zoning allowance. Title professionals will only check zoning and permit records if they are providing specific coverage for those issues pursuant to a policy endorsement. Put another way, if agents must conduct due diligence beyond that found in the purchase contract, then it will add additional cost to the transaction and the report.

ALTA suggests amending (b)(1) to read as follows:

Reportable transfer.

(1) Except as set forth in paragraph (b)(2) of this section, a reportable transfer is a transfer where the sales agreement states there is a transfer of residential real property, to a transferee entity or transferee trust where such transfer does not involve an extension of credit to a transferee that is:

(i) (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.

Second, ALTA recommends changing the requirements for entering into a designation agreement under 320(c)(3). The currently drafted provision is unworkable because it requires entering into a separate agreement for each individual transaction. For agents to have some level of cost savings for using an agreement, they need to have a level of certainty about the volume of transactions another party will report under an agreement. This is best done by allowing companies to enter blanket agreements with partners to cover transactions where they are likely to be in the reporting cascade such as a title insurer agreeing to do reports for an agent if they are providing title insurance in the transaction.

Third, FinCEN should allow the reporting person to rely on a representation from the transferee entity that the transferee entity is subject to one of the exemptions in 320(j)(10). Without the ability to rely on the transferee’s representation, the settlement agent must engage a lawyer to determine the status of any transferee entity claiming an exemption. This will further increase the expense outlined in the analysis. We recommend updating 320I(3) to say:

The reporting person may rely upon information provided by the transferee or their representative for purposes of determining if a transferee is a transferee entity or transferee trust under paragraph (j)(10) of this section or the reporting obligations described in paragraph(e)(1) and (e)(2) of this section, provided the transferee or their representative certifies in writing, to the best of their knowledge, the accuracy of the information.

Fourth, FinCEN should provide guidance about the reporting of beneficiary information when a beneficiary is a minor. As discussed above, the use of revocable trusts for estate planning is common in some markets. Often the beneficiaries will be minor children of the settlor. Parents of those children may be unwilling to share their children's sensitive personal information including their social security number or citizenship status. FinCEN should exempt reporting where a party or beneficial owner is a minor.

FinCEN Needs to Provide an Explicit Good Faith Attempt Protection

As our experience with the GTOs proved, it is not always easy to collect information from a buyer and their representatives when there is not a direct legal obligation for them to provide such information. Non-financed transactions typically have shorter periods between execution and settlement of the purchase and sale agreement. This makes it difficult to collect information prior to the settlement since the majority of data required under the GTO (i.e. beneficial ownership information) is not needed for the settlement or the underwriting of title insurance.

In our collaboration with FinCEN, title companies have received informal guidance to submit incomplete reports under the GTOs without the risk of penalty under the Bank Secrecy Act. We urge FinCEN to provide an explicit provision in this proposal outlining a similar good faith attempt protection.

We recommend adding a new subparagraph to outline this protection.

320(n) Good Faith Attempt

No penalty may be imposed with respect to any incorrect or incomplete Real Estate Report except upon a showing that the reporting person did not act in good faith in the collection of information from the transferee and transferor.

Additionally, subparagraph (k) should be amended to include guidance to select an option of "not applicable" (N/A) or "not provided by transferee or transferor" when the information is unavailable or irrelevant.

One Year Implementation Period is Necessary

If a rule is finalized, we recommend at least a full year implementation period from the date of publication of the final rule. Under the current GTOs, we have worked with FinCEN to provide a one-month period for onboarding new counties during an expansion. This ramp-up period is necessary to train staff in those locations. However, the one-month period has only been feasible given the limited nature of previous GTO expansions. The proposed rule's nationwide coverage will require significant education and training for operations in the over 3,000 counties not currently covered by the GTO.

We have also learned during GTO implementation that one size fits all training doesn't work. This is because of the uniqueness of real estate transactions in each state and within a state. While there are many similarities in transaction roles and processes, each county will have some unique practices that will need to be understood to effectively implement the proposed rule. With the GTOs, FinCEN dedicated resources to working closely with the industry including cohosting training webinars and establishing procedures for answering transaction-specific questions.

Thus, for training to be effective and ensure FinCEN receives valuable data in the first year, we believe FinCEN must provide a year's implementation period and dedicate specific resources to assisting with training and answering questions for the industry.

FinCEN Should Not Continue to Expand the GTOs During the Rulemaking Process

Given the complexities of implementing this proposed rule and the differences between the proposed rule and the GTOs, we request that FinCEN refrain from expanding the GTOs during the pendency of this rulemaking. We further recommend that FinCEN allow the GTOs to expire during the six months prior to the effective date for this rulemaking. This will aid in reducing confusion for settlement agents and their staff during the implementation phase and avoid unnecessarily duplicative spending on compliance.

Conclusion

As the title industry has done since 2016, it stands ready to help law enforcement in investigating the use of real estate for money laundering. While no one is happy to spend more money on non-revenue producing requirements, we have been heartened to hear the value of the data provided by the industry has been to law enforcement. Obviously, this value will decrease as the rule expands to the whole country and must make sure this rule is carefully tailored to ensure the cost is equivalent to any public benefit. We believe these changes outlined in the letter significantly move in this direction. We look forward to working with FinCEN as it works to produce a regime that is clear, not unduly burdensome or duplicative, and safeguards United States real estate.

ALTA appreciates the opportunity to comment. Please reach out to Steve Gottheim, General Counsel, at sgottheim@alta.org should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Gottheim", is written over a light blue background.

Steve Gottheim
General Counsel



January 13, 2025

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

Re: Docket Number FINCEN-2024-0019 and Office of Management and Budget (OMB)
control number 1506-0080

Director Gacki,

The American Land Title Association¹ (ALTA) appreciates Financial Crimes Enforcement Network's (FinCEN) continued engagement with the title industry as we work to implement the Anti-Money Laundering Regulations for Residential Real Estate Transfers final rule. This letter provides a number of specific changes to the draft report form that, if not accepted, will make compliance with this rule significantly more onerous and costly for settlement agents required to file these reports. It will also make the data collected significantly less valuable for FinCEN and its law enforcement partners.

Overall, ALTA believes the report form is overly complex and cumbersome. As discussed in the notice, the form contains 111 distinct fields of which you expect 60 percent to be completed in a transaction. As has been our experience with reporting transactions under the Geographic Targeting Orders (GTOs), we believe the length of the form, use of non-industry specific terminology and lack of clear instruction will overly burden reporting persons and lead to an unnecessarily increased call volume for FinCEN's support services. Additionally, the lack of clear instructions for industry on utilizing automated interfaces (application programming interfaces or APIs) to push data into the Bank Secrecy Act (BSA) filing system makes it difficult for industry to use technology to reduce costs.

¹ ALTA represents title insurers, title agents and attorneys that provide peace of mind to Americans by insuring their property rights and closing their real estate transactions. Our members range from small, one-county operations to large national title insurers in the United States. The mission of ALTA is to improve the skills and knowledge of providers in the real property transaction, effectively advocate member concerns, and standardize products for industry use.

For example, once settlement agents have the data they collected, they need an efficient way to provide this data. It is burdensome to rekey much of the data that may already exist in closing software into a website or webpage and substantially raises costs, time and effort.

Ideally, FinCEN should allow an API for the collection of this data. We need a technology partnership that will allow the ability to provide an efficient solution for the transmission of data from the operations as well as a resource/pass-thru for its agents. This solution would further allow for the validation of the settlement agent entity and the ability to return confirmation and/or proper error handling for the submissions. The industry needs a new tool or process, rather than a rehash of the GTO reporting. FinCEN should assist the industry in capitalizing on its available technology to improve efficiency.

Given these concerns, we offer the following suggested changes to the real estate report form to improve usability for settlement agents.

Remove requirements that *all* fields be completed before submission is allowed:

The preamble to the final rule acknowledges that reporting persons² will need to rely on information provided by the buyer, seller and their representatives to complete a report. There are relatively few (approximately 35) of the 111 fields that reporting persons will have available in their files or that they can readily obtain from someone other than the buyer, seller and their representatives (parties). As discussed in our meeting on November 22, 2024, there will be a high number of reports where some required piece of information is unavailable to the reporting person. This is true today under the current GTOs. Other than to call FinCEN for guidance, there is no instruction on what the reporting person can do to complete the form, nor an option to leave the relevant fields blank.

Beyond scenarios where the reporting person cannot obtain all required information, there may also be situations where the reporting person feels that they cannot comfortably rely upon the information provided by the parties. Given the liability provided under the BSA, reporting persons must have an avenue for submitting reports when they do not have all the information or cannot rely on the information provided by the parties.

Taking into account the practicalities discussed above, mandatory fields should be limited to fields related to the reporting person's own information and to the basic transaction details readily available to reporting persons. These would include fields 1-22 and the legal names of the parties.

Additionally, Field 3 should not include the direction, "must be blank unless otherwise directed by FinCEN." Instead, FinCEN should prepare a Frequently Asked Question to provide samples of notes for reporting persons to provide in different scenarios that can be entered in Field 3.

Provide allowances for reporting persons to indicate information that could not be collected:

The final rule allows reporting persons to reasonably rely on the information provided by the parties to the transaction. This is in recognition of the fact that reporting persons have no independent ability to obtain information about the parties and their financing details. As with the GTOs, the

² For the purposes of this letter, the term reporting person(s) refers to settlement agents or any other individual required to, and held liable for, completing the real estate reporting form.

sensitivity of much of this information will make it likely that many parties will refuse to provide some of this information. For example, buyers and sellers will likely hesitate to provide citizenship information. Further, reporting persons are going to be cautious about aggressively pushing for some required information due to anti-discrimination laws like the Fair Housing Act.

Likewise, given the repeated warnings about real estate wire fraud³ and seller impersonation scams, parties are rightfully concerned about providing their bank account numbers as presently required in Part V. This data is largely unnecessary since existing state laws require parties to fund transactions using bank payments which are already subject to Anti-Money Laundering (AML) and Suspicious Activity Report (SAR) review, such as wire transfers and certified checks.

Reporting persons need an avenue to report the transaction while acknowledging the parties' lack of cooperation. Under the GTOs, when parties refuse to provide data, the reporting person will usually get instruction from FinCEN's BSA call center to file the incomplete report and file a suspicious activity report. A similar allowance is needed here that does not require contacting FinCEN's BSA call center or the filing of a separate suspicious activity report. Requiring reporting persons to obtain instruction from FinCEN's BSA call center before filing will overwhelm the system given the high volume of expected reports.

Providing the flexibility within the form for the reporting person to identify the reason a field is not complete – such as allowing the reporting person to select “not provided by party”, “N/A,” or “exempt” – will enable the reporting person to demonstrate their willingness to comply with the rule and assist FinCEN to identify why a field was not able to be completed.

Separate Part III, Transferee Information, into two separate sections, one for Entities and one for Trusts:

Part III in its current form will lead to confusion and possibly inaccurate reports being filed. In combining information required for both entity and trust transferees, FinCEN expects reporting persons to discern which data fields apply and which do not apply to the particular party for which they are reporting information. A much clearer approach would be to create a Part III for Transferee Entities and a Part IV for Transferee Trusts. This will ensure that information is reported accurately and efficiently in these cases.

Utilize widely recognized real estate industry terms instead of phrases like transferee, transferor and reporting person

One of the biggest challenges with implementing this rule will be training the employees of over 17,000 settlement agencies across the country. The overwhelming majority of these businesses are small businesses, with the average settlement agency having fewer than 5 employees and reporting \$500,000 in gross revenue or less. Utilizing more widely recognized terminology instead of the phrases currently used in the rule will make the report easier to train on and complete.

To this end, we request you update the form to use additional terms to ease understanding. Terms like transferee should also have the parenthetical “(buyer)” added to conform to traditional

³ <https://www.fincen.gov/news/news-releases/fincen-analysis-business-email-compromise-real-estate-sector-reveals-threat>

nomenclature. Likewise, add the parenthetical “(seller)” when using the term transferor. Another example is adding “(sale price)” when discussing total consideration paid.

Allow for the uploading of pertinent documents and adequate character counts:

A number of fields require information that may be voluminous or already captured in a separate document. One example of this is the property’s legal description. This information can be multiple paragraphs or pages depending on the property. It would be more efficient to just require the reporting of the tax parcel number and property address, while only requiring the legal description if those are not available. However, if FinCEN does feel they need the legal description, then you should ensure that settlement agents can copy and paste from the deed or upload a copy of the deed to avoid unnecessary re-keying. In such cases where uploading a document is not possible, the form’s fields should permit unlimited characters to permit accurate and complete reporting of available information.

Additionally, in trust transactions the rule acknowledges that roughly a dozen fields can only be completed by obtaining a copy of the trust certificate. Thus, the reporting person should be able to upload the trust certificate in lieu of completing fields containing similar information such as the legal name of the trust, its address and settlor.

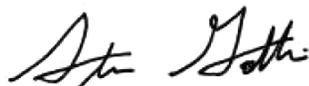
Add form logic when the report is completed online:

Given the large number of fields that may not be needed depending on the transaction, FinCEN should employ generic “if/then” logic to remove or gray out fields that are not applicable. For example, if on question 23 the reporting person states the transferee is an entity, then all the fields or options only relevant to trusts should be removed or made unavailable for selection.

Additionally, for beneficial ownership fields, FinCEN should add a “same as above” check box for addresses. Often the address for the beneficial owners of a trust is the same as another reported address (like the property address).

ALTA appreciates your consideration of all of these suggestions. We believe they will reduce the overall complexity of this reporting obligation and, over time, reduce the high cost of this regulation while effectively meeting its objectives. Please reach out to Steve Gottheim, General Counsel, at sgottheim@alta.org should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Gottheim".

Steve Gottheim
General Counsel



July 7, 2025

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

Re: RIN 1506–AB54 Agency Information Collection Activities; Submission for OMB Review;
Comment Request; Real Estate Reports

Director Gacki,

The American Land Title Association¹ (ALTA) continues to believe that the single most important improvement the Financial Crimes Enforcement Network (FinCEN) can make to its Real Estate Report form is to allow reporting companies to either file incomplete forms or adding an option to denote which information fields were not provided by the customer.

Without some guidance to settlement agents about how to handle transactions where customers refuse to provide requested information compliance with the Anti-Money Laundering Regulations for Residential Real Estate Transfers will be significantly more difficult if not in some instances impossible. As you note, the Real Estate Report form includes up to 111 potential fields for completion in a transaction. While less will likely be needed in most transactions, all transactions will still require settlement agents to collect extremely sensitive data about customers like citizenship, addresses and social security numbers. This is the type of information we are constantly imploring customers not to share due to the risk of cybercrime and fraud. It is quite foreseeable because it happened as the industry implemented the real estate Geographic Targeting Orders (GTOs) that customers will refuse to provide the information, leaving settlement agents in a compliance limbo.

Like with the GTOs FinCEN must put out formal guidance to settlement agents allowing settlement agents to file incomplete reports in these instances without penalty. This can be

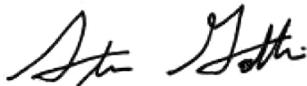
¹ ALTA represents title insurers, title agents and attorneys that provide peace of mind to Americans by insuring their property rights and closing their real estate transactions. Our members range from small, one-county operations to large national title insurers in the United States. The mission of ALTA is to improve the skills and knowledge of providers in the real property transaction, effectively advocate member concerns, and standardize products for industry use.

achieved by either allowing Real Estate Reports to be filed without all applicable fields completed. It could also be done by adding options to some or all fields that contain personal information, allowing the settlement agent to report that the customer refused to provide the data. Providing this option about which data fields customers refuse to share will provide FinCEN with truly actionable information about suspicious activity in all cash real estate transactions.

ALTA continues to appreciate your engagement with the title industry as we work to implement the Anti-Money Laundering Regulations for Residential Real Estate Transfers final rule. As we get closer to December 1, 2025 we will need more resources to help get the industry ready. In the coming weeks, we will share frequently asked questions we are getting at our compliance training events. Our tech vendors will need to connect with your team to start testing batch filing (and encourage you to develop APIs) to ease data transmission. We will also share many of the educational resources we are developing for the broader real estate community. Our experience shows that to get this right we need FinCEN to be part of the broader effort explaining this rule the other 1.5 million real estate professionals, attorneys, developers, accountants and others that counsel buyers on real estate transactions. Without that cooperation the data collected will be significantly less valuable for FinCEN and its law enforcement partners, and the hundreds of millions of dollars spent by the industry on compliance will be a waste.

ALTA appreciates your consideration of all of these suggestions. Please reach out to Steve Gottheim, General Counsel, at sgottheim@alta.org should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Gottheim", written in a cursive style.

Steven Gottheim
General Counsel