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 Association[1] (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 agreement[2] 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 transaction[3]. 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 Act[8], 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] Settlors 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 Act[12] 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 trust[13] 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)(1Ind (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,

Steve Gottheim

General Counsel