January 10, 2025

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

RE: Docket Number FINCEN-2024-0019; Office of Management and Budget (OMB) Control Number 1506-0080 *(Agency Information Collection Activities; Proposed Collection; Comment Request; Real Estate Reports*).

Director Gacki:

Founded in 1907, the California Land Title Association ("CLTA") is a non-profit trade organization representing the title insurance industry throughout all 58 counties in the largest state in the country. Our members employ thousands of professionals involved in the safe and efficient transfer of real estate and in refinancing of loans, in both the settlement closing process and the search of title to real property. The Association's membership is comprised of title insurance companies and underwritten title companies conducting business in the state and CLTA serves as the advisory organization for the title industry, pursuant to Insurance Code Section 12340.8.

As initially communicated in its formal comments last year,[1] CLTA continues to maintain that the U.S. Department of Treasury's ("the agency's") implementation of an expansive surveillance program of Politically Exposed Persons ("PEPs") via the Anti-Money Laundering Regulations for Residential Real Estate Transfers final rule ("Final Rule") will create significant burdens for parties to real estate transactions without yielding a clearly discernible benefit. The draft proposed collection form only exacerbates these concerns, as it is unnecessarily complex, provides poor guidance to reporting persons, and represents a drastic expansion in the scope of the agency's surveillance activities as well as the burden of implementation.

Notwithstanding the fact that CLTA continues to maintain that the agency should consider discontinuing the information collection and reporting under the Final Rule altogether, CLTA believes the agency should at a minimum: (a) significantly narrow the scope of information proposed for collection; (b) utilize technology to minimize the burden of the collection of information, and; (c) take a more measured or phased approach to the expansion of the information collection and reporting under the Final Rule.

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[1] *See* California Land Title Association, "Re: Notice of Proposed Rulemaking (NPRM) regarding the Anti-Money Laundering Regulations for Residential Real Estate Transfers (Docket Number FINCEN-2024-0006; 1506-AB58: Anti-Money Laundering Regulations for Residential Real Estate Transfers)," Apr. 16, 2024, https://www.regulations.gov/comment/FINCEN-2024-0005-0617.

1215 K Street, Suite 950, Sacramento, CA 95814
Tel (916) 444-2647 * Fax (916) 444-2851 * www.clta.org * mail@clta.org
Federal Tax ID 95-0595810

<u>The agency should significantly narrow the scope of information required to be collected and reported via the proposed form</u>:

While CLTA understands the agency's overarching goal of combating money laundering activity associated with what is likely a relatively small amount of California real estate transactions, the Association's members remain concerned that the method of information collection and reporting under the Final Rule is unnecessarily complex and cumbersome.

The proposed form, for example, contains 111 distinct data fields (the number of which would be significantly increased in more complex transactions, such as those involving multiple properties), representing a substantial increase in the number of data fields collected via Geographic Targeting Orders ("GTOs") today. The Final Rule further mandates that all 111 of these data fields are required in each report by default, and requires duplicative reporting in certain situations, e.g., when an individual may be reportable in more than one category of associated person, such as both beneficial owner and signing individual.

The above aspects of the proposed form represent a likely doubling (or tripling in the case of more complex transactions) in the amount of information required under the form. As described in greater detail below, CLTA expects that a reporting person will likely only have ready access to approximately one-third of the information required to complete the form within their files or obtainable from someone other than the buyer. Therefore, reporting persons will have to obtain and rely upon information provided by the parties or their representatives for roughly 70 data fields' worth of information, a time-consuming burden that, when combined with the expectation that reporting persons obtain instructions from the agency prior to filing as needed, will add substantial complexity and costs to the completion of reportable transactions.

The agency should therefore reduce the number of fields required to be collected and reported under each report, such as fields relating to a reporting person's own personal information and basic transaction details, such as the legal names of the buyer, seller, and their signors. Similarly, the agency should consider eliminating the need for duplicative reporting of real estate investors, IRS Form 1099-S Reporting, and IRS Form 8300 Cash Reporting information. Such a reduction in scope would eliminate the required duplication of information already collected, thereby significantly reducing the burden of, and increasing the utility of, the Final Rule.

Barring the above narrowing in scope, the agency should at a minimum consider altering the required payment-related information to align with the information that is already typically provided by a financial institution in conjunction with the receipt of a wire transfer, as the information currently required under the proposed form can't be obtained or verified due to privacy laws.

The form contains other inefficiencies, particularly in those fields relating to transferee information. For example, field 26 requires the reporting of total consideration paid or to be paid by or on behalf of a transferee in US dollars. If there are multiple transferees, however, a transferee has no way of knowing what amounts are owed by each individual transferee. How can the transferee be expected to provide the information to the reporting person when it has no way of doing so? Similarly, field 27 requires the listing of a foreign principal place of business with no U.S. location, which doesn't contemplate the scenario in which the transferee doesn't conduct **any** business.

Without any of the aforementioned reductions in the scope of collected information, CLTA harbors serious concerns over the Final Rule's burden on businesses and the closing/settlement of real estate transactions, and fear that any benefit that could have otherwise been realized via a more measured expansion under the Final Rule will be lost.

The agency continues to significantly underestimate the burden of collecting and reporting information under the Final Rule, and should utilize technology to minimize the burden of its implementation:

Pursuant to its previous comments, CLTA continues to maintain that the true cost of implementation of the Final Rule in California is significantly higher than the agency's estimates. Much of this cost can be attributed to the fact that the Final Rule imposes a **hidden burden in the form of determining whether a transaction is subject to the rule at all**. Outside of this fundamental flaw in calculating the cost of the Final Rule, however, the agency also continues to underestimate costs related to training and information collection and reporting, and should make changes to the rule, or utilize technology, to obviate the associated burden.

For example, CLTA believes that the agency's estimate of an ongoing training burden at approximately 60% of initial training burden[2] is too low. For instance, the Final Rule's assertion that "more than half of the original training would not be firm-specific and remains useful to the employee regardless of whether they remain with their initial employer or change jobs within the same industry"[3] does not contemplate the fact that businesses are risk averse and likely to provide newly-hired employees with complete, rather than abbreviated, training regimens in order to limit their liability and ensure proper compliance with the law.

CLTA also continues to maintain that the agency's estimated average time for information collection and reporting of two hours and 45 minutes, respectively, remain substantially low. For instance, it appears the agency is continuing to fail to account for the investment of time on the front end of a transaction needed to determine whether a transaction is reportable in the first place, and that such a determination may often include a costly legal analysis by licensed legal personnel. Similarly, transactions involving a trust, which are quite common in California, will often likely require the involvement of an attorney in order to determine whether such transactions are subject to collection and reporting.

Even setting these apparent fundamental flaws aside, the estimated average information collection time of two hours itself seems unrealistic, given the scope of information proposed for collection under the Final Rule. For instance, as previously described, CLTA estimates a reporting person will only have ready access to approximately one-third of the 111 data fields proposed for mandated collection, meaning that settlement agents will have to explain to, converse with, and obtain from buyers and/or their signors information pertaining to approximately 70 unique data fields – some of which are quite sensitive – for each transaction.

Assuming that a reporting person can quickly compile the information they already have in their possession within 20 minutes (at a rate of less than one minute per data field, given the ready availability of the information), the agency appears to presume that the remaining approximately 70 data fields can be collected at an average rate of two minutes per data field which, given the sensitive nature of the

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[2] *See* Proposed Rule, pg. 91.

[3] *See* Proposed Rule, pg. 91.

information and the likely resultingly necessitated explanations by reporting persons, seems unrealistic at best. **This dynamic already exists under the GTOs today**, with reporting persons routinely encountering pushback from, and finding themselves explaining to, buyers and signors, and CLTA expects it to significantly worsen under the Final Rule, given that the information newly proposed for collection is considered much more sensitive. Furthermore, high profile security lapses within the U.S. government, such as the recently reported breach of the agency's systems by alleged Chinese government hackers,[4] will likely exacerbate the reluctance of buyers and signors to hand over such sensitive information.

The agency also does not appear to account for the fact that many of the above-referenced data fields are not currently collected by the industry and will result in significant up-front technology costs associated with the creation of new forms, updates and changes to operational systems, and changes to business processes and training requirements.

In addition, it is worth noting that these impacts will fall disproportionately on the backs of smaller businesses that aren't able to absorb the associated costs via economies of scale, and who will face significant hardships as a result of increased staffing needs. Over half of CLTA regular member title companies meet the definition of a small business as provided by the U.S. Census Bureau,[5] many of whom serve rural or otherwise underserved communities. It is these individuals who will ultimately bear the greatest burden under the Final Rule as proposed.

In recognition of these burdens, CLTA respectfully proposes that the agency consider technological solutions to ease the burden on reporting persons and parties to real estate transactions.

For instance, the **agency should consider leveraging its existing information reporting requirements** by cross referencing real estate transactions with individuals who have a beneficial ownership interest in entities who purchase or sell real estate. Under this reporting regime, a reporting person would only be obligated to provide the agency with a small, simple batch report that would include the name of the transferor, transferee, sales price and property location, which could then be compared to the Beneficial Ownership Information (BOI) database against the entities of concern to law enforcement.

The agency should also allow for the automated submission of reportable information and provide the ability to submit batch reports. While the agency states that it is not including cost estimates associated with adopting technologies that would facilitate batch filing because it has not yet received any reportable filings in batch format under the GTOs,[6] CLTA notes that the GTOs were time-limited in nature, and the industry had no insight into their permanence and therefore was rightly reluctant to expend significant resources to automate their submission. The Final Rule, conversely, is permanent and nationwide and, as a result of fewer qualifications needed for reportability, will affect significantly more transactions. Therefore, it is reasonable to expect that the industry will seek to automate the reporting burden as much as possible, and FinCEN should account for those costs accordingly.

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[4] *See* Ellen Nakashima and Jeff Stein, *Washington Post*, "Treasury's sanctions office hacked by Chinese government, officials say," Jan. 1, 2025. https://www.washingtonpost.com/national-security/2025/01/01/treasury-hack-china/

[5] *See* United States Census Bureau, "The Majority of U.S. Businesses Have Fewer Than Five Employees," Jan. 19, 2021. https://www.census.gov/library/stories/2021/01/what-is-a-small-business.html

[6] *See* Department of the Treasury, "Agency Information Collection Activities; Proposed Collection; Comment Request; Real Estate Reports, RIN 1506-AB54," pg. 4.

<u>The agency should take a more measured – or even phased – approach to the expansion of its information collection and reporting under the Final Rule:</u>

Given the above concerns, CLTA respectfully suggests the agency give consideration to a graduated or phased implementation of the Final Rule, such as one more limited in scope either in terms of its geographic boundaries, or the types of transactions to which it applies.

There is ample precedent of this type of approach in past regulatory regimes. For example, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") – which itself was phased in over time – created a regulatory framework for derivatives markets, including "swaps," which required entities that met the definition of a "swap dealer" to register with either the Commodity Futures Trading Commission ("CFTC") or the Securities and Exchange Commission ("SEC"). A key component of the "swap dealer" definition – the *de minimis* threshold – was intended to be phased in over two-and-a-half years in order to allow subjected entities to assess the criteria for registration and prepare for compliance, as well as give the CFTC time to study the swap markets.[7] The phase-in period ultimately lasted almost seven years prior to CFTC's finalization of the threshold.

Other aspects of Dodd-Frank were phased in over time as well, including margin and capital requirements, as well as recordkeeping and reporting requirements, which were gradually introduced to allow entities to build systems for compliance, and gave regulators an opportunity to assess the effects of the regulation prior to full implementation.

Though one could argue the transition from GTOs to the Final Rule is itself a phase-in of the regulations, **the expansion of the rule – in terms of geography, scope of information, and scope of subjected transactions – is so substantial and sudden that it may as well not have been phased-in at all**. This is especially true for those CLTA members – again, many of them small businesses – who have had **no** exposure to the GTOs because they didn't operate in the counties to which they applied, and are now being given little opportunity to learn how to comply with the Final Rule before being subjected to its provisions.

The benefits of a phased-in implementation are not limited to industry and could benefit the agency as well. For example, the agency could better understand its staffing needs in terms of processing the information, gauge what information is actually of utility, and make adjustments accordingly.

The title industry in California understands the agency's goal of eliminating or thwarting money laundering in California, as long as it is undertaken in a thoughtful way that does not impose undue hardship on consumers and business, and CLTA members will continue to work closely with federal and state agencies and protect consumers. However, CLTA respectfully requests that the agency reconsider its current approach to the Final Rule and contemplate – at a minimum – thoughtful changes to increase the rule's efficacy and reduce the burden of its implementation.

[7] *See* Congressional Research Service, "The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title VII, Derivatives," November 6, 2012. https://crsreports.congress.gov/product/pdf/R/R41398/7

Respectfully,

Anthony Helton
Executive Vice President