



April 16, 2024

Policy Division
Financial Crimes Enforcement Network
P.O. Box 39
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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*).

To Whom It May Concern:

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 most populated state in the country, and the fourth largest economy in the world. 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 California Insurance Code Section 12340.8.

While CLTA understands the U.S. Department of the Treasury's desire to create an expansive program to surveil the activities of Politically Exposed Persons (PEPs), we have significant concerns regarding the proposed rule's (a) lack of necessity, (b) exorbitant costs that will be eventually borne by consumers already facing an expensive real estate market in California, (c) the impact on small businesses struggling in an already competitive industry, and (d) the encroachment of the overly broad program on innocent consumers' constitutional right to privacy, and enhanced privacy protections created under the California Consumer Privacy Act of 2018 (CCPA) and California Privacy Rights Act (CPRCA).

In CLTA's opinion, the existing GTO program is failing to effectively target and thwart money laundering in California and throughout the nation, and the Department of the Treasury should consider discontinuing it. Failing that, CLTA believes some of the suggested amendments are necessary to significantly reduce the costs, burdens, and delays the GTO proposed rule would cause if implemented as currently drafted.

The significant burdens on California consumers and title and settlement companies are unjustified given a lack of evidence that the Geographical Targeting orders (GTOs) are resulting in criminal prosecutions:

While the CLTA supports surgically targeted and thoughtful efforts to combat the flagrant but relatively small number of transactions in California that might be associated with money laundering activity, we have seen very little evidence from the Department of the Treasury – in terms of quantifiable **historical data** or **specific examples** – that the existing Geographical Targeting Orders (GTOs) have resulted in **actual criminal convictions**.

Given the significant time, money, and delays related to the **existing** GTOs, we believe that the proposed rule's significantly expanded transaction reportability criteria, as well as the increased data collection and reporting of sensitive personal information that it mandates, will create substantial, unnecessary burdens, risks, and costs for the title industry and consumers that are not justified given the lack of quantifiable evidence and publicized prosecutions validating the efficacy of the GTOs.

External independent studies seem to indicate the information and data collected under the GTOs are resulting in very few prosecutions:

Having received very limited data and evidence of success directly from the Department of the Treasury, CLTA has looked at independent studies to determine what the GTOs have accomplished relating to actual money laundering activity identified by the Department of the Treasury's Anti-Money Laundering (AML) programs. What we found was not success, but an almost total lack of evidence of convictions resulting from the GTOs, and a very low rate of Suspicious Activity Reports (SARs) associated with apparent criminal activity.

In the proposed rule, the Department of the Treasury implies the GTOs have captured significant illegal activity by stating that "42 percent of non-financed real estate transfers captured by the...GTOs are conducted by individuals or legal entities on which a SAR has been filed."¹ While this number is being provided to justify the existing program and its expansion, a deeper dive into the data indicates that the statistic is not as meaningful as it first appears.

Specifically, a 2017 study conducted by the Bank Policy Institute found that a "median of 4% of SARs...warranted follow-up inquiries from law enforcement,"² "[meaning] that 90-95% of the individuals that banks report on were likely innocent."³

Thus, the Department of the Treasury appears not to have a 42 percent "success rate" of detecting illegal money laundering activity in the GTOs as implied, but rather a disappointing two-to-three percent success rate in finding illegal money laundering activity according to the Bank Policy Institute study. ***Or, conversely, 97-98 percent (97-98%) of the GTOs appear to involve innocent parties conducting real estate transactions.***

CLTA would assert that under any metrics, a failure rate of 97-98 percent (**97-98%**) cannot be defined as successful.

Further studies seem to support the assertion that the AML efforts related to the GTOs do not seem to have great value in thwarting illegal activity:

Other studies of AML efforts have shown that front-end surveillance is of little use in identifying money laundering. The U.S. General Accounting Office (GAO), in a 1998 study on the efficacy of SARs, noted "limited or no investigative action" by law enforcement based on information supplied by FinCEN and that

¹ See Proposed Rule, pg. 8.

² See Bank Policy Institute, "Report on U.S. Financial Institution Resources Devoted to BSA/AML & Sanctions Compliance," pg. 2.

³ See Bank Policy Institute, "The Truth About Suspicious Activity Reports." <https://bpi.com/the-truth-about-suspicious-activity-reports/>

FinCEN is unable to report if referrals result in criminal prosecutions.⁴ Rather, the majority of money laundering activity is identified via investigatory work and judicial proceedings **following** an arrest or prosecution.⁵

Additionally, a separate Global Financial Integrity (GFI) study indicates that very little money has been identified as being related to money laundering when compared to the total amount of real estate transactions occurring across the nation:

Furthermore, the Department of the Treasury cites a GFI study estimating “that at least \$2.3 billion had been laundered through the U.S. real estate market from 2015 to 2020.”⁶ While at first blush this amount seems significant, it is actually a very small amount when compared to all real estate transactions being conducted nationwide.

Over that same period, data from the U.S. Census Bureau, U.S. Department of Housing and Urban Development, and National Association of REALTORS® indicate that the mean annualized sales of existing homes was 5.41 million,⁷ for a total of 32.46 million sales of existing homes, at an average median sales price of \$317,000.⁸ Accordingly, the total transacted amount for the residential real estate market for existing homes for 2015-2020, inclusive, was approximately **\$10.3 trillion**.

As such, the laundered funds cited in the GFI study accounted for only a fraction of a percent (0.02%) of the total funds associated with existing home sales over that six year period.

Furthermore, the Department of the Treasury also does not make clear the extent to which that same activity was already surveilled through existing GTOs, leaving open the question of how much additional information the agency would obtain through expansion of the program under the proposed rule.

The huge costs associated with the GTO expansion under the proposed rule would indicate that the program fails to justify its existence under a simple cost/benefit analysis that we will discuss in more detail below.

Given the low success rate and relative infrequency with which real property is utilized for money laundering purposes, from CLTA’s perspective this really begs the question whether the existing program should continue in its current form at all, much less be expanded to cover many more transactions in the state of California and across the nation.

The Department of the Treasury efforts are redundant and unnecessary:

Much of this activity, as the proposed rule itself concedes, appears to be separately gathered by existing AML programs under the Bank Secrecy Act (BSA), Foreign Investment in Real Property Tax Act (FIRPTA),

⁴ See GAO (U.S. General Accounting Office). 1998. FinCEN's Law Enforcement Support Role Is Evolving. GAO/GGD 98-117. Washington, DC: U.S. General Accounting Office.

⁵ See Norbert J. Michel and Jenn J. Schulp, “Revising the Bank Secrecy Act to Protect Privacy and Deter Criminals,” CATO Policy Analysis No. 932, July 26, 2022, <https://www.cato.org/policy-analysis/revising-bank-secrecy-act-protect-privacy-deter-criminals>

⁶ See Proposed Rule, pg. 6.

⁷ See National Association of REALTORS®, Existing Home Sales, retrieved from TradingEconomics; <https://tradingeconomics.com/united-states/existing-home-sales>.

⁸ See Federal Reserve Bank of St. Louis, “Median Sales Price of Existing Homes” <https://fred.stlouisfed.org/series/HOSMEDUSM052N>

and Office of Foreign Assets Control (OFAC) Compliance, while the Corporate Transparency Act and associated Beneficial Ownership Rules already provide to the Department of the Treasury much of the information that would be gathered under the proposed rule.

Thus, it is fair to ask if the substantial burdens and costs that will be imposed upon consumers and industry under the proposed rule are justified, when much of the information it seeks to capture has already been gathered. Rather than create redundancies in both federal governmental programs and the private sectors, shouldn't the focus of the Department of the Treasury be on finding a better method of utilizing the information already collected?

Lastly, though several case examples have been shared over the years in the Department of the Treasury's Annual National Money Laundering Risk Assessments, it is unclear whether the GTOs were necessary for the apprehension of the individuals cited as examples, given that *much of the illegal activity appeared to be captured via BSA reporting*.

In short, we have little evidence that the substantial burden imposed under the GTOs is yielding results that justify the existence of the current program, much less the costly and burdensome expansion proposed in the new rule.

The proposed rule will capture sensitive information from millions of innocent California consumers, contrary to California's public policy goals:

As CLTA weighs the value of the existing GTOs and their proposed expansion to law enforcement and the Department of the Treasury, we believe it is imperative to ask: what is the actual goal of the expanded GTO rule, given the fact that 97-98 percent (97-98%) of the individuals whose personal information and transactions are being scrutinized are innocent parties?

One can argue that the intrusive nature of the proposed rule expanding the GTOs will effectively create a surveillance program that results in the ***mass collection of the sensitive personal information of millions of innocent consumers***, very little of which is demonstratively related to criminal activity. Targeting criminals should be the focus of the program, not the creation of a dragnet surveillance program funded by innocent consumers involved in real estate transactions.

California has long considered itself at the forefront of protecting consumer privacy and personal information collected in residential real estate transactions. As part of this effort, the California Legislature enacted landmark legislation intended to provide consumers with more control over the personal information that businesses collect about them – the CCPA – in 2018.⁹ In November of 2020, California voters further expanded these privacy protections via Proposition 24, the CPRA, which amended the CCPA and added new additional privacy protections that began on January 1, 2023.

In order to comply with the CCPA and the CPRA, title and settlement companies subject to the CCPA and CPRA invested substantially in complying with the required rigorous privacy protections those laws require. The enactment of the proposed rule will result in a significant erosion of consumer privacy rights won under the CCPA and CRPA, however, given the type and quantity of information that California title and/or settlement companies will be required to gather pursuant to its provisions.

⁹ See "California Consumer Privacy Act (CCPA)": <https://oag.ca.gov/privacy/ccpa>

The CCPA and CRPA clearly seek to limit the collection and sharing of personal information of consumers. However, the proposed rule will require settlement agents and other reporting entities to obtain, examine, and – presumably, retain – documents beyond those that are typically reviewed within a real estate transaction, including bank account and trust documents.

This practice of requesting, collecting, and retaining sensitive personal information related to banking and estate planning decisions runs directly counter to the principles of the CCPA and CPRA, will create tension between reporting persons and transferees over what will likely be interpreted as the irrelevant collection and reporting of personal information seemingly immaterial to a real estate transaction, and will substantially increase the industry’s electronic storage requirements and risks.

GTO expansion to living trusts would sweep in a lot of transactions in California:

Furthermore, as we will explain in further detail below, the proposed rule does not appear to exclude from reporting transfers in which individuals place their real property in a living trust when obtaining financing from an AML-compliant lender. Thus, under our interpretation of the new rule, all transfers into a living trust will be reportable, meaning that title and/or settlement companies will now be required to collect and retain information from individuals that were not exempted from the proposed rule, greatly expanding the scope of individuals whose information will be collected, many of whom would be considered “low-risk” by the Department of the Treasury itself due to their use of AML-compliant lending.

The proposed rule would require title and escrow personnel to utilize attorneys that would result in significantly higher costs than predicted by the Department of the Treasury and cited in the proposal:

Under California law, courts have long opined that the “practice of law” includes providing “legal advice and legal instrument and contract preparation, whether or not these subjects were rendered in the course of litigation.”¹⁰ Furthermore, providing legal advice or service is a violation of the State Bar Act if done by an unlicensed person, even if the advice or service does not relate to any matter pending before a court.¹¹

These are not idle risks; California statute contains criminal penalties for the unauthorized practice of law (UPL). In 1989, a court found that an eviction service unlawfully practiced law where it provided forms for processing an unlawful detainer action and asked questions of the clients as necessary to complete the forms. The court conceded that if the service merely provided forms and filled in the blanks with information provided by the client, and gave a general manual that was not particularized to the client's specific problem, it would not have illegally practiced law.

The above case is but a single example of why title companies and settlement agents stringently avoid providing services that could be defined as giving legal advice. When such a service is required, an attorney is usually brought into the transaction to deal with these situations.

Rather than violating California law as it relates to the unauthorized practice of law, title, escrow and settlement agents will need to enlist the use of attorneys to define which “beneficial interests” fall under the

¹⁰ *Birbower, Montalban, Condo & Frank, P.C. v Superior Court.*, supra, at 128.

¹¹ *Mickel v. Murphy* (1957) 147 Cal.App.2d 718, 721.

new proposed GTO expansion. Using in-house attorneys will come at a significant cost, and when in-house attorneys are not available, outside counsel will need to be used at an even higher cost.

Therefore, as described below in more detail, the costs projected by the Department of the Treasury in the new proposed GTO rule are likely to be much higher in states like California where the unauthorized practice of law is prohibited.

The Department of the Treasury’s cost estimate for the proposed rule is unrealistically low and does not accurately reflect the costs incurred by California title and/or settlement providers and consumers:

In its proposed rule, the Department of the Treasury states that “FinCEN computed the following fully loaded average hourly wages by the respective primary occupation categories: settlement agents, \$70.33; title insurers, \$70.46; real estate escrow agencies, \$84.15; attorneys, \$88.89.” The Department of the Treasury then uses these estimates in conjunction with an estimate of 1.25 hours of initial training time, and 0.5 hours per year of refresher training time. The Department of the Treasury further estimates an average two hours “per reportable transaction time cost to collect and review transferee and transaction-specific reportable information and related documents, and an average 30 minute additional time cost to reporting,”¹² for a total of 2.75 hours of transaction reporting time, with an additional hour of recordkeeping reporting time.¹³ Additionally, the Department of the Treasury states that “FinCEN aggregate cost estimates suggest that first year costs will be between approximately \$267.3 million and \$476.2 million and that the current dollar value of the aggregate costs in subsequent years will be between approximately \$245.0 million and \$453.9 million annually.”¹⁴

We believe that the Department of the Treasury is significantly underestimating both: (a) the hourly wages of the various title and/or settlement industry employees involved, (b) as well as the time investment required for collecting and reporting information on transfers. As a result, the Department of the Treasury is also significantly underestimating the aggregate costs associated with implementation of the rule.

It will take a lot more time to gather information required by the new GTO expansion rule than asserted by the Department of the Treasury:

As described above, determining whether a transfer is subject to the rule requires evaluation of a number of criteria, such as whether an entity meets the reporting threshold as a transferee trust, or whether vacant land has been permitted for residential one-to-four-unit construction. Making this determination will require significant time investment ***prior to even beginning information collection and reporting.***

With respect to permitting, for example, title and/or settlement companies do not investigate, and do not receive information on, zoning nor permits, as those items are generally not covered by title insurance policies and are not relevant to the settlement of a real estate transaction. As such, title and/or settlement companies do not possess extensive institutional knowledge on permitting, which is handled on all levels of government by potentially disparate systems, creating a complex research burden for reportable transactions.

¹² See Proposed Rule, pg. 93.

¹³ See Proposed Rule, pg. 97.

¹⁴ See Proposed Rule, pg. 90.

Similar investigatory burdens, arguably including possible legal determinations, will surround the identification of transferees as reportable or not, including identifying whether a trust is a securities reporting issuer, or has a trustee that is a securities reporting issuer; a statutory trust, or; an entity wholly owned by a trust.

Establishing beneficial ownership of a trust for reportable transfers will require even greater levels of investigation and potential **legal determinations** than those used to establish whether a transaction involves a reportable transferee. ***In the proposed rule, the Department of the Treasury itself concedes that even “after a significant investment of resources, the identities of the beneficial owners may not be readily ascertainable.”¹⁵***

The beneficial owner of a trust could be:

- A trustee of the transferee trust.
- An individual other than a trustee with the authority to dispose of transferee trust assets.
- A beneficiary who is the sole permissible recipient of income and principal from the transferee trust or who has the right to demand a distribution of, or withdraw, substantially all of the assets from the transferee trust.
- A grantor or settlor who has the right to revoke the transferee trust or otherwise withdraw the assets of the transferee trust.
- A beneficial owner of any legal entity that holds at least one of the positions in the transferee trust, except when the legal entity meets specified criteria.
- A beneficial owner of any trust that holds at least one of a number of specified positions in the transferee trust, except when the trust meets certain specified criteria.

Furthermore, because of an apparent misunderstanding of the involvement of trusts even in transactions involving AML-compliant lending, the Department of the Treasury appears to be significantly underestimating the number of transfers that would be subject to the rule, and, accordingly, the resulting cost impact.

For instance, the Department of the Treasury states that transfers “that would be deemed reportable exclude all transactions where the transferees receive any extension of credit from a financial institution subject to AML/SAR Reporting program requirements that is secured by the residential real property being transferred.” As described above, however, this exclusion is ambiguous and does not appear to include transfers to living trusts for estate planning purposes, which are quite common in California due to the cost and complexity of probate.

¹⁵ See Proposed Rule, pg. 88.

In its estimate, the Department of the Treasury also appears to fail to account for other costs incidental to the proposed rule, including: auditing and reviewing transactions to ensure proper reporting; the development of electronic database storage solutions for the storage of submitted reports and their potential retrieval in response to FinCEN or IRS requests; reviewing and verifying compliance with regulatory agencies; and time spent explaining the rule to reportable transferees, or even potentially reportable transferees whose information must be examined in order to make a determination of their status.

Accordingly, we believe that the Department of the Treasury has significantly underestimated the extensive time, personnel requirements, and costs involved in implementation of the proposed rule.

Given that attorneys will often be needed in California to make determinations regarding which transactions and what data is required by the GTO expansion proposal, we looked to an online database to ascertain a typical hourly rate of an attorney in California. According to the online database Clio, lawyers in California typically charge between \$178 to \$509, the average being \$344.

For reasons explained above, the services of an attorney will often be required in order for companies to comply with the requirements set forth in the GTO proposed expansion rule to determine beneficial interests. This average hourly fee far exceeds the \$70 settlement agent hourly fee, the \$70.46 real estate escrow agent hourly fee, and even the \$88.89 attorney hourly fee provided by the Department of the Treasury in the proposed rule.

Quite frankly, it is difficult if not impossible to unpack the methodology the Department of the Treasury used to make its calculations of the costs of the proposed rule for the effected industries, but they appear to be absurdly low estimates.

Given the underestimation of time it will take to comply with the proposed rule and the underestimation of the hourly rate associated with making legal determinations under California law, CLTA concludes that the initial and ongoing costs of \$267-\$476 million and \$245-\$453 million, respectively, estimated by the Department of the Treasury¹⁶ are significantly underestimated for the country, and that the estimates could equate with the costs associated with implementation in California alone.

The exorbitant costs of the proposed rule will disproportionately impact smaller businesses:

Smaller businesses will be disproportionately affected by the proposed rule due to a lack of economies of scale. Real estate firms, independent escrow companies, and law firms are identified in the cascade and represent small businesses by definition, having less than 20 employees in most cases.

These smaller businesses will have to allocate otherwise qualified staff to perform the menial task of collecting the required data, reviewing and verifying the required data was provided, and preparing and submitting reports.

¹⁶ See Proposed Rule, pg. 90.

Attempts to cover these additional expenses could place smaller businesses at a competitive disadvantage, and thus these smaller businesses would have to turn away closings and insuring these covered transactions, negatively impacting their revenue and profitability.

As discussed above, the costs will often involve attorneys and would have even more of an impact on small business than expected.

The costs associated with the proposed rule cut directly against affordable housing initiatives proposed by the Biden administration:

The proposed rule would significantly increase closing costs at a time of historic housing unaffordability, when many policy makers, including in the Biden administration, are looking at solutions to reduce closing costs and other housing costs that make housing unattainable for so many. By its own admission, the Department of the Treasury expects an increase of \$500 per reportable transaction due to the proposed rule, which is likely far too low a calculation for all of the reasons described above.

While it is difficult to exactly pinpoint the per transaction cost associated with the labor-intensive efforts needed to carry out the GTOs, we believe it fair to say that the fee might be closer to double the amount calculated by the Department of the Treasury, especially if attorneys are doing more of the deterministic work under the proposed rule, and for more transactions than originally anticipated.

Even if the Department of the Treasury's cost estimates were taken at face value for the purposes of estimating the effects of the proposed rule on housing affordability, does any reasonable person believe that adding \$500 per transaction is not going to have a negative impact in California and across the nation? For every \$500 increase in housing costs, there will be consumers on the margin looking to buy real property that would find purchasing a home just out of reach. And to make matters worse, if the \$500 (or more) cost associated with the proposed rule is rolled into the mortgage amount and amortized over the life of a 30 year loan at 7% interest, the true cost to consumers increases well beyond this initial charge.

Recently, the Director of the Consumer Financial Protection Bureau (CFPB), Rohit Chopra, stated that "closing costs 'have really shot up, and it drains people's down payment and pushes up their monthly mortgage payment,'" and that the CFPB would "propose new regulations to address closing costs that 'benefit the lender but not the borrower' and can cut into homebuyers' down payments."¹⁷ In his State of the Union address, President Biden outlined several proposals intended to aid homebuyers struggling to afford current housing prices. Aren't the costs resulting from the proposed rule being passed onto consumers in contradiction to these efforts, for the sole benefit of the Department of the Treasury but not the borrower?

Suggested Changes that Might Make the Proposed Rule Workable:

If the GTO process is continued, despite the lack of success under the existing program as discussed above, CLTA would suggest the following changes to the proposed rule:

¹⁷ See Shira Stein, *San Francisco Chronicle*, "Biden SOTU: Is Washington ready to get serious about the housing crisis?" March 7, 2024: <https://www.sfchronicle.com/politics/article/biden-state-of-the-union-18709798.php>

1. The proposed rule should be clarified to *exclude* certain real property transfers made for estate planning purposes, namely, transfers to a living trust that involve AML-compliant financing, and transfers to a living trust that bear the same name as the owner(s):

It is common for individuals in California – even when obtaining financing – to hold title to real property in a living trust as part of an estate plan, allowing their heirs to avoid the extensive costs and delays associated with complex probate proceedings.

Due to lending standards, however, individuals that obtain credit for the purchase of residential real property who wish to hold title in a trust as part of an estate plan must first take title to real property as natural persons, obtain the credit (i.e., close the financed transaction), and then separately transfer title to the trust. The proposed rule does not appear to contemplate this common estate planning practice, which essentially renders the exception for financed transfers meaningless when an individual that obtains financing also intends to hold title in a trust.

The proposed rule makes clear that a transaction involving an extension of credit from an AML-compliant lender to an individual is intended to be excepted due to the presence of AML programs that make the likelihood of money laundering activity very low:

“First, certain financed transfers would be excepted. Specifically, the exception would apply to transfers involving an extension of credit to the transferee, but only if the credit is secured by the transferred residential real property and is extended by a financial institution that has both an obligation to maintain an AML program and a requirement to file SARs...”¹⁸

However, the subsequent transfer from an individual utilizing AML-compliant lending to a family trust appears to trigger the reporting requirement, as the proposed rule specifically states that a reportable transfer is “a transfer of any ownership interest in residential real property to a transferee entity or transferee trust.”¹⁹ Though the proposed rule notes that several exceptions to this definition of “reportable transfer” exist, it pointedly does not include a transfer in which the residential real property is encumbered by a mortgage obtained via an AML-compliant lender.

This same dynamic would exist when an individual whose real property is in a trust seeks to refinance their home, as they must transfer title back into their name, obtain the new loan, and then transfer title back into the trust, thereby expanding the scope of the proposed rule to include refinance transactions. In so doing, an otherwise-excepted transfer involving AML-compliant financing would be captured under the rule for no other reason than the individual wishes to hold title to real property in a trust for estate planning purposes. We are confident that the Department of the Treasury did not contemplate these refinance transactions, which would ordinarily not be reportable, when calculating the costs associated with the proposed rule.

Similarly, the proposed rule would also needlessly capture another type of transfer to a living trust for estate planning purposes that **doesn't** involve AML-compliant financing: when the trust itself bears the name of the owner(s). For example, if an individual is utilizing cash to pay for real

¹⁸ See Proposed Rule, pg. 37.

¹⁹ See Proposed Rule, pg. 36.

property but would like to hold title in a trust for estate planning purposes, and transfers title to a trust, the name of which is the same as the name of the owner(s), the Department of the Treasury's ability to monitor ownership of the real property is not inhibited, and there is no need to subject the persons involved to the intense scrutiny of the proposed rule.

The above types of transfers should fall under the definition of low-risk transfers for which the rule already provides, including transfers "incidental to death, divorce, or bankruptcy."²⁰ Without this clarification, the exception for low-risk transfers in California will be substantially impaired given the prevalence with which individuals place title to real property in a living trust for estate planning purposes.

2. Information processing methods should be automated under the proposed rule to preserve its effectiveness while significantly lessening burdens on, and risks to, industry and consumers:

Under the proposed rule, a reporting person manually collects and prepares the required data and information, and then electronically enters and submits that data as a report for each covered transaction. The entire process, which we assume will utilize the forms used in the submission of reports pursuant to current GTOs (or something similar), is a wholly manual process which often leads to mistakes and increases the cost of compliance and processing times.

The Department of the Treasury should amend the proposed rule to move from this manual process to a more efficient, automated process. Specifically, the Department of the Treasury should utilize the Beneficial Ownership Interest (BOI) database established under the Corporate Transparency Act (CTA) to cross reference real estate transactions with individuals who have a beneficial ownership interest in entities who purchase or sell real estate.

A reporting person should only be obligated to provide the Department of the Treasury with an electronic batch report that includes the name of the transferor, transferee, sales price and property location (similar to 1099 reporting). This information should be more than enough for purposes of comparison to the BOI database by law enforcement. This approach would resolve duplicative data and information collection efforts, prevent title and/or settlement companies from performing the unauthorized practice of law, and prevent significant increases in closing costs associated with implementation of the proposed rule.

Title and settlement companies in California and elsewhere have complied with the GTOs for eight years, despite a lack of evidence as to their effectiveness in actually eliminating or thwarting money laundering in California. In addition to protecting the public records system and facilitating the American dream of homeownership, CLTA members will continue to work closely with federal and state agencies in protecting consumers. Notwithstanding our firm belief that the proposed rule should not move forward at all, we strongly believe that the above clarifications to the regulations are warranted at a minimum to add clarity, prevent duplicative reporting, and reduce costs.

²⁰ See Proposed Rule, pg. 38.

Respectfully,

A handwritten signature in black ink, appearing to read 'Craig C. Page'. The signature is stylized with a large, sweeping 'C' at the beginning and a long, horizontal stroke across the middle.

Craig C. Page
Executive Vice President
and Counsel