



January 13, 2016

Ms. Jennifer Shasky Calvery
Director
Financial Crimes Enforcement Network
U.S. Department of the Treasury
P.O. Box 39
Vienna, Virginia 22183

Dear Ms. Calvery:

The American Land Title Association and our members appreciate you taking the time to discuss the Federal Crimes Enforcement Network's (FinCEN) recent Geographic Targeting Order (Order) that imposes additional recordkeeping and reporting requirements designed to deter money laundering in New York City and Miami. To help our title insurer members that received the Order work to implement the enhanced reporting requirements, we would like to propose the following clarifications to the Order. We believe these changes will help promote consistency in reporting across the industry and better help the industry understand the transactions covered by this Order.

First, we would propose adopting the definition established in the Real Estate Settlement Procedures Act (RESPA)¹ of the term "residential" within the triggering clause of your Order. The industry is familiar with the regulatory scheme and definitions provided in RESPA and this familiarity will help companies consistently identify transactions covered by this Order.

RESPA applies to "federally related mortgage loans" which are defined as loans that are "secured by a first or subordinate lien on *residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families*, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property" (emphasis added). We propose using the emphasized portion of this definition for determining whether a transaction is covered by this Order.

¹ The Real Estate Settlement Procedures Act is codified at 12 U.S.C. § 2601 *et seq.* and is amended by 12 C.F.R. § 1024 *et seq.* (Regulation X) and 12 C.F.R. § 1026 *et seq.* (Regulation Z).

Second, for purposes of determining when a “purchase is made, at least in part, using a Monetary Instrument,” we recommend that the Order should not cover transactions when only a de minimis amount of the transaction price is paid via a Monetary Instrument.² We believe that de minimis threshold should be the current \$10,000 threshold for filing a Currency Transaction Report under current Internal Revenue Service (IRS) and FinCEN regulations.³ This will allow the reporting to comport with the intended purpose of the Order to track the movement of larger amounts of Monetary Instruments in violation of federal anti-money laundering laws.

Under state real estate settlement laws or industry practice, settlement agents require collected and settled funds for the closing of a real estate transaction. This process traditionally requires the transmission of settlement funds via wire transfers, which are not considered Monetary Instruments under this Order. However, in some instances a minimal amount of the purchase price may be held by a third party (such as the real estate agent holding an earnest money deposit) or a service connected with the transaction may be paid for outside the closing. In these situations, a title insurer could be unaware that a specific transaction is covered by the Order.

Third, we suggest the definition of the term “Legal Entity” as used in the Order exclude a trust. The Order defines the term “Legal Entity” as a corporation, limited liability company, partnership or other similar business entity.” Unlike a corporation, a trust is not considered a separate legal entity under the common law of various states. Adopting this recommendation will provide a definition consistent with those used by the industry for purposes of determining how to effectively transfer title.

Fourth, we believe you should define the term “representing the purchaser” as used in Section II.B.2.i to mean the person authorized by the entity to enter legally binding contracts for the entity (typically its officers or managing member). It is typically in transactions of the type covered by the Order for the purchasing legal entity to be represented by numerous counsel and executives (or members in the case of an LLC). The industry already typically requests corporate authority documents for determining the identity of the person necessary for executing documents for closing the transaction. Adopting a similar definition for purposes of this Order will help promote consistent reporting.

Fifth, we recommend that the term “agents” as used in the Order refer only to people or entities with a contractual relationship with the covered title insurer. State insurance laws require insurers to appoint agents via a specific written contract or authorization. This will help the insurers consistently determine which business partners they must educate and supervise to comply with the Order.

² Order Section II.A.2.v.

³ 31 U.S.C. 5331.

Sixth, we suggest making the record retention period consistent with the requirements imposed by state law for real estate settlement instead of the five years specified in the Order. This will make it easier for companies to store and sort their records following the closing and ensure that records for Covered Transactions do not get mistakenly destroyed before the close of the state law or FinCEN retention period.

Lastly, we urge FinCEN to use a reasonable and good-faith test for determining insurers' compliance with this Order. We believe that the clarifications requested above and joint education with the insurer and FinCEN should ensure that all Covered Transactions that the insurer is aware of will be reported; however, even with the best efforts of title insurers, there may be transactions of which the insurer is not made aware (because no insurance is purchased) or in which the insurer only first learns of the transaction after the fifteen day period after closing.

ALTA appreciates your willingness to help the title industry understand their compliance obligations under the Order. As we work with the insurers to provide education to the settlement agents and attorneys that are directly involved in these transactions, we hope that FinCEN will partner with us to provide the necessary education to ensure greater compliance with the Order. This will be especially helpful given that settlement agents and attorneys are not the insurers' agents for purposes of conducting the real estate settlement and thus the insurers have little control over the operations of these separate businesses.

Thank you for considering the recommendations in this letter. ALTA looks forward to continuing to work with FinCEN to implement this Order and to help achieve successful compliance with these new requirements. Should you have any questions about this letter, please contact Steve Gottheim, senior counsel, at steve@alta.org or 202-261-2843.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle L. Korsmo". The signature is fluid and cursive, with a large initial "M" and "K".

Michelle L. Korsmo
Chief Executive Officer