



February 14, 2023

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

Re: Docket Number FINCEN-2021-0005; RIN 1506-AB49/AB59: BOI Ownership Info
Access and Safeguards

Acting Director Das:

The American Land Title Association¹ (ALTA) believes the Beneficial Ownership Information (BOI) system being created by FinCEN under the Corporate Transparency Act is a critical tool for combatting money laundering in the financial system. When it comes to understanding how illicit actors use real estate in money laundering, the real estate Geographic Targeting Orders (GTOs) have shown that BOI is the critical piece of information that has not historically been available commercially or from government data. When fully implemented, the BOI system will provide law enforcement with its most valuable source of data about the use of shell companies to launder funds via real estate.

We agree that “the utility and value of BOI reported to FinCEN, therefore, rests in large part on the bureau’s ability to provide authorized recipients predictable and efficient access to reported BOI while protecting the confidentiality and integrity of the information.” While we support limiting access to the BOI system, we believe that the proposal to limit financial institution access only to entities subject to the Customer Due Diligence rule is too narrow. We recommend FinCEN broaden the scope of § 1010.955(b)(4) to include facilitating compliance for financial institutions subject to a special measure, GTO or other rule that requires the collection, reporting or review of BOI. This should include a title insurance company or its licensed agents that have to comply with any extensions of the real estate GTOs or any other real estate transaction reporting regime. Below are our responses to some of the questions posed by the proposed rule.

¹ ALTA represent 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 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.

Question 12: FinCEN proposes to define “customer due diligence requirements under applicable law” to mean the bureau's 2016 CDD Rule, as it may be amended or superseded pursuant to the AML Act. The 2016 CDD Rule requires FIs to identify and verify beneficial owners of legal entity customers. Should FinCEN expressly define “customer due diligence requirements under applicable law” as a larger category of requirements that includes more than identifying and verifying beneficial owners of legal entity customers? If so, what other requirements should the phrase encompass? How should the broader definition be worded?

13. If FinCEN wants to limit the phrase “customer due diligence requirements under applicable law” to apply only to requirements like those imposed under its 2016 CDD Rule related to FIs identifying and verifying beneficial owners of legal entity customers, are there any other comparable requirements under Federal, State, local, or Tribal law? If so, please specifically identify these requirements and the regulatory bodies that supervise for compliance with or enforce them.

As the national trade association for the title insurance and settlement services industry, we have unique insights in this area given our members’ experience with the real estate GTOs. These GTOs, first implemented in 2016 and currently extended until April, require ALTA members to report all cash real estate purchases by corporate entities in select cities where the purchase price exceeds \$300,000. Our comments below are based on these experiences, especially the way in which collaboration with other real estate professionals is instrumental in the success of this program.

Under the GTO regime, FinCEN has issued orders directly to roughly 40 title insurers licensed to do business in a state. These orders require the insurer to impose those requirements on their authorized agents. For a reportable transaction, title insurers are required to send FinCEN four key pieces of information: (1) basic transaction information (closing date, property address and purchase price); (2) the name of the purchasing entity; (3) the identity of the individual who is primarily representing the purchasing entity and (4) beneficial ownership information about the purchasing entity. These requirements only apply when a title insurance policy is issued in the transaction.

The first three pieces of information are relatively easy for title companies to provide. This is necessary information collected in the ordinary course of a real estate transaction. The beneficial ownership data is the most costly and difficult piece to collect because it is not necessary to close the deal and implicates other privacy concerns for the purchaser.

The success of the GTOs is directly related to the reporting of accurate beneficial ownership data.² Given this reliance on beneficial ownership reporting for measuring the value of any real estate reporting regime, ALTA believes that if FinCEN is going to extend the GTOs or replace them with a permanent transaction reporting regime as suggested by FinCEN in an advanced notice of proposed rulemaking (RIN: 1506-AB54), then access to the BOI system when it is up and running is critical to the success of any real estate related AML rules. It would be

² See 86 FR 69595 <https://www.federalregister.gov/d/2021-26549/p-105>. “In evaluating reporting from the Real Estate GTOs issued since 2016, FinCEN and law enforcement agencies believe that a substantial proportion of the reported transactions for the purchase of property involved a beneficial owner who was also the subject of a SAR. For example, a FinCEN advisory published in May 2017 stated that the proportion of such overlap was more than 30%”

counterintuitive to design a real estate reporting regime requiring title companies to report BOI without giving them access to that data. Further, it would be even more counterintuitive to require companies to report BOI data like title companies do under the GTO when that data is directly accessible by FinCEN and other law enforcement.

Question: 11. FinCEN proposes that FIs be required to obtain the reporting company's consent in order to request the reporting company's BOI from FinCEN. FinCEN invites commenters to indicate what barriers or challenges FIs may face in fulfilling such a requirement, as well as any other considerations.

Cost Estimate Question 12: Is the burden estimate for obtaining and documenting customer consent reasonable? If not, what would be a reasonable estimate?

It is not burdensome to require financial institutions to obtain customer consent as long as FinCEN provides a safe harbor form of consent, via written documentation and electronic disclosure, and requires reasonable record retention. Moreover, if title companies are to have a continued obligation under the GTO or more formal AML requirements, the system for submitting requests must ensure a response within the typical timing needs of the real estate transactions.

Given the limited diligence periods in real estate contracts (typically 30-45 days from signing the contract), most title companies would likely want to obtain consent at the time of order entry. Depending on the obligations put upon the title company, this should ensure the maximum amount of time to obtain BOI and avoid potential delays to settlement. Further, title companies will need to have a guarantee of response early enough in that period to deal with any issues shown during that diligence that must be cured before settlement.

To address these issues, we recommend FinCEN develop a standard consent form that can be executed digitally and sample clauses for terms and conditions along with a safe harbor from any obligations based upon the use of those standard consents.

The title industry appreciates the strong working relationship with FinCEN as it designs a BOI system that minimizes the cost and compliance burden on real estate transactions, while maximizing the accuracy and effectiveness of investigatory leads for law enforcement. We look forward to continuing to work with FinCEN on potential new requirements for real estate transactions.

Please reach out to Steve Gottheim, General Counsel at ALTA, with any questions at sgottheim@alta.org.

Sincerely,



Steve Gottheim
General Counsel