No. 26-11307-BB

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

FIDELITY NATIONAL FINANCIAL, INC. and FIDELITY NATIONAL TITLE INSURANCE COMPANY,

Plaintiffs-Appellants,

v.

SECRETARY, U.S. DEPARTMENT OF THE TREASURY; U.S. DEPARTMENT OF THE TREASURY; DIRECTOR OF THE FINANCIAL CRIMES ENFORCEMENT NETWORK; AND THE FINANCIAL CRIMES ENFORCEMENT NETWORK,

Defendants-Appellees.

Appeal from the United States District Court for the
Middle District of Florida Jacksonville Division

No. 3:25-CV-00554-WWB-SJH

BRIEF OF AMICUS CURIAE AMERICAN LAND TITLE ASSOCIATION IN SUPPORT OF APPELLANTS' INITIAL BRIEF AND REVERSAL

Peter D. Hardy
Madeline Schonberger
HOLLAND & KNIGHT LLP
1650 Market Street, Suite 3300
Philadelphia, Pennsylvania 19103
Telephone: (215) 252-9600

Laura B. Renstrom
Daniel Mahfood
HOLLAND & KNIGHT LLP
50 North Laura Street, Suite 3900
Jacksonville, Florida 32202
Telephone: (904) 353-2000

Attorneys for *Amicus Curiae*
American Land Title Association

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Eleventh Circuit Rule 26.1-1, undersigned counsel certifies that, in addition to the persons identified in appellants' and defendants' certificates of interest, the following persons have an interest in the outcome of this appeal:

1. Chamber of Commerce of the United States of America
2. Davidoff, Amanda F. (Attorney for Chamber of Commerce of the United States of America, National Federation of Independent Business Small Business Legal Center, Inc. and National Association of Home Builders of the United States)
3. National Federation of Independent Business Small Business Legal Center, Inc.
4. National Association of Home Builders of the United States
5. Richardson, Daniel J. (Attorney for (Attorney for Chamber of Commerce of the United States of America, National Federation of Independent Business Small Business Legal Center, Inc. and National Association of Home Builders of the United States)
6. Schonberger, Madeline (Attorney for American Land Title Association)

Dated: August 7, 2026

/s/ Peter D. Hardy

Peter D. Hardy
Counsel for *Amicus Curiae*, the
American Land Title Association

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 29(c)(4)(A), *amicus curiae* American Land Title Association states that it is a nonprofit corporation without any parent companies, subsidiaries, or affiliates, and does not issue stock to the public.

Dated: August 7, 2026

/s/ Peter D. Hardy

Peter D. Hardy
Counsel for *Amicus Curiae*, the
American Land Title Association

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Rules

Other Authorities

AMICUS CURIAE'S IDENTITY, INTERESTS AND FILING AUTHORITY

The American Land Title Association ("ALTA") is the national voice of the title insurance and settlement services industry. 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. Its mission is to improve the skills and knowledge of providers in the real property transaction industry, effectively advocate member concerns, and standardize products for industry use. ALTA has approximately 5,300 company members, ranging from very small, one-county operations to larger, national title insurers. According to Small Business Administration data cited by the Financial Crimes Enforcement Network ("FinCEN"), almost all title companies represent "small" businesses. Anti-Money Laundering Regulations for Residential Real Estate Transfers, Notice of Proposed Rulemaking, 89 Fed. Reg. 12424 (Feb. 16, 2024) ("NPRM"), at 12459 (Table 6). According to ALTA's internal membership data, roughly 89% of its member title companies have $1 million or less in annual gross revenue.

ALTA files this brief to provide information on the substantial burdens which the new Anti-Money Laundering Regulations for Residential Real Estate Transfers, Final Rule, 89 Fed. Reg. 70258 (Aug. 29, 2024) ("the Rule"), will impose upon ALTA's membership—particularly small businesses—and the speculative nature of the Rule's purported benefits. ALTA estimates that its members will be responsible for filing well over half of all required reports estimated by FinCEN.

ALTA has authority to file this brief because defendants have consented to its filing under Fed. R. App. P. 29(a)(2). ALTA's counsel authored this brief in whole, and no party, party's counsel, or other person contributed money intended to fund preparing or submitting this brief. *See* Fed. R. App. P. 29(e).

STATEMENT OF THE ISSUES

Amicus curiae adopt and incorporate by reference the Statement of the Issues in the Appellants' initial brief. Br. at 4-5.

SUMMARY OF THE ARGUMENT

FinCEN severely underestimates the Rule's costs to ALTA's members, which are not anti-money laundering ("AML") professionals and which will have to expend considerable resources on training, personnel and technology to try to understand the complex Rule and obtain beneficial ownership information ("BOI"). This reporting will occur through a complicated and confusing form for almost one million transfers annually. The Rule does not allow a reporting person to indicate that it cannot obtain information, even though ALTA's members cannot compel third parties to provide BOI. Meanwhile, ALTA's members are subjected to penalties threatened by FinCEN for "failing" to collect BOI, even though such BOI is already collected by other financial institutions and readily accessible to regulators and law enforcement from financial institutions. FinCEN attempts to justify these significant costs by suggesting speculative, intangible benefits that the Rule "might" create, unsupported by any objective analysis. FinCEN also attempts to justify the Rule by relying on a handful of cases, even though FinCEN has admitted, when substantially revising the reporting requirements of the Corporate Transparency Act ("CTA"), that BOI reporting actually has only "marginal" value to law enforcement.[1]

ARGUMENT

I. FinCEN Severely Underestimated the Rule's Costs to Industry

The Rule estimated three types of compliance costs: (1) costs for both the reporting and non-reporting person(s) to determine who should report, and to perform the reporting itself; (2) costs for reporting persons to train employees on the Rule's general requirements; and (3) costs related to recordkeeping. FinCEN set forth several cost estimates, including a midpoint estimate of $559.4 million in the first compliance year. 89 Fed. Reg. 70258, 70284. Unfortunately, FinCEN did not

[1] The Magistrate Judge ignored portions of ALTA's initial amicus brief on the Rule's costs and benefits by adopting FinCEN's claim that amici arguments not raised by the parties supported by amici do not need to be considered. Doc. 82 - Pg 37 n. 34. This was error. First, all of ALTA's points fit squarely into appellants' arguments on costs and benefits. Second, the purpose of an amicus curiae brief is to aid the court's understanding of the matter by proffering timely and useful information possessed by the amicus curiae, *see Ga. Aquarium, Inc v. Pritzker*, 135 F. Supp. 3d 1280, 1288-89 (N.D. Ga. 2015), rather than simply repeating the parties' exact same arguments. Here, ALTA is well-positioned to provide relevant information to the Court regarding the significant impacts of the Rule on thousands of its members, nationwide.

propose an actual reporting form ("the Report") until *after* publishing the Rule, thereby making fully-informed comments on the Rule impossible. When FinCEN finally proposed the Report, it estimated that costs should increase by another $45.3 million. Agency Information Collection Activities; Proposed Collection; Comments Request, Real Estate Reports, 89 Fed. Reg. 89700, 89704 (Nov. 13, 2024).

Even accepting FinCEN's estimates, these significant costs are overly burdensome, particularly when weighed against the Rule's speculative benefits. Small businesses—the bulk of ALTA's membership—are ill-equipped to absorb these additional costs and complex regulatory burdens, which will erode already thin profit margins. Regardless, these estimates are deeply flawed because they understate the true burdens. ALTA surveyed more than 1,300 professionals on their experience complying with the Rule since March 1, 2026 and prior to the March 19, 2026 ruling from the Eastern District of Texas vacating the Rule. *See Flowers Title Cos., LLC v. Bessent*, No. 6:25-CV-127-JDK, 2026 WL 782283 (E.D. Tex. Mar. 19, 2026). The results of this survey,[2] discussed *infra*, confirm the significant true burdens imposed by ALTA's membership by the Rule.

---

[2] *See* ALTA, New Data Reveals Implementation Challenges Under FinCEN Rule (Apr. 9, 2026), https://www.alta.org/news-and-publications/news/20260409-New-Data-Reveals-Implementation-Challenges-Under-FinCEN-Rule ("ALTA Survey"). "The survey captures a cross-section of title agents, underwriters, attorneys and settlement providers working across a range of markets and transaction volumes." *Id*. "The findings reveal that, while companies worked to comply, the [Rule]

A. <u>The Nature of Title Insurance and Settlement Services</u>

The Rule has a "cascading" approach to who must file a Report. 31 C.F.R. §§ 1031.320(c)(1)(i)-(vii). Title and settlement companies will shoulder the brunt of the responsibilities and costs.

To fully appreciate the burdens the Rule will impose on ALTA's membership, it is important to understand what title and settlement companies do and do *not* do during a real estate transaction. They do not typically get involved until a purchase and sale agreement is executed. They constitute a third party independent to the transaction whose only interest is to ensure the integrity of the transaction. A title company's due diligence is focused on ownership and other interests related to the land. It 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 information regarding outstanding debts or liens that must be resolved prior to the transfer. This process is focused on determining whether a title is marketable. 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

introduced complex requirements that disrupted workflows, created friction with consumers and raised fundamental questions about responsibility and risk." *Id*.

signatures on a document as needed under state law. They do not collect beneficial ownership information ("BOI") of an entity acquiring title for the purpose of underwriting the title insurance policy, because there is no need to collect BOI in the absence of the Rule. (*See* Doc. 19-23 - PageID 10781-83 (ALTA Comment on the NPRM).)

Not surprisingly, over half of surveyed professionals provided that "identifying beneficial owners and collecting their information" as one of the top three operational burdens created by the Rule. *See* ALTA Survey. ALTA's members lack both the experience with the Rule's processes and the power to obtain certain key information.

B. <u>FinCEN's Reporting Cost Analysis Is Severely Flawed</u>

FinCEN estimated, prior to even publishing a proposed Report, that a reporting party will need to spend an average of three hours on reporting, with 2.75 hours devoted to collecting information and filling out the report. 89 Fed. Reg. 70258, 70286 (Table 3). These numbers are irrationally low for several reasons.

First, the Rule is incredibly complex. A review of the regulations, *see* 31 C.F.R. §§ 1031.320(a) to (n), confirms this. The proposed Report exacerbates this complexity by setting forth no less than 111 fields for a reporting person to complete—and some fields must be filled out several times, because, for example, there will be multiple beneficial owners. *See* 89 Fed. Reg. 89700, 89706-16. This is the minefield which FinCEN expects a small business with only a handful of employees to understand and fill out accurately and completely within the space of a few hours, at the risk of potential civil or even criminal penalties. Likewise, FinCEN never accounted for the costs of implementing new processes and hiring compliance staffing, whether in-house or outsourced, all of which has proven to be necessary. *See* ALTA Survey. Some of the Rule's complexities are daunting to a lawyer, whom many of ALTA's members cannot afford. For example, FinCEN's estimates do not account for costs to determine if a transaction is even reportable. Even this supposedly simple predicate question is difficult for many small businesses, *see* ALTA Survey (most significant challenges of Rule include determining if a transaction is reportable), and the four corners of a purchase and sale agreement often will not answer this question.

Perhaps the clearest example of the Rule's complexity, which FinCEN glosses over, is its definition of "beneficial owner," 31 C.F.R. § 1031.320(n)(1)(i)(A), which incorporates by reference the beneficial owner definition from the CTA regulations at 31 C.F.R. § 1031.380(d). This definition is incredibly opaque and broad. It can involve all sorts of possible "control" persons. *Id.* § 1031.380(d)(1). This slippery definition is one of the main reasons why FinCEN largely scrapped its CTA regulations, as discussed *infra*. Yet ALTA's members, no matter how small, still are expected to understand and apply this key definition within a few hours.

Second, FinCEN lowballed the difficulties of collecting information—especially BOI. Many commentators—including ALTA (*see* Doc. 19-23 - PageID 10789 (Comment on the NPRM))—implored FinCEN to allow reporting persons, such as title and settlement agents, to state on the Report that they could not provide certain information because they could not obtain it from the parties conducting the sale. FinCEN declined to implement this sensible request and imposed additional compliance costs and time, not to mention unfair legal risk, on reporting persons struggling to provide required information. FinCEN gave industry short shrift: "[T]here is no exception from reporting under the [Rule] should a transferee fail to cooperate in providing information about a reportable transfer. The [Rule] does not authorize the filing of incomplete reports, and a reporting person who fails to report the required information about a reportable transfer could be subject to penalties." 89 Fed. Reg. 70258, 70264. FinCEN offered a facile "solution": "Real estate professionals are encouraged to cooperate and provide information in their possession[,]" despite the lack of any legal duty to do so. *Id*. at 70280.

Predictably, this has proven to be one of the most intractable problems of the Rule: many buyers and sellers are simply refusing to provide necessary information for reporting. Sometimes, this is because of significant concerns over privacy and data security. Even when information is obtained, transactions are often delayed due to consumer concerns and problems with collecting data. *See* ALTA Survey.

Third, FinCEN ignores technology costs. FinCEN ascribes "no line item of incremental expected IT costs" because FinCEN expects that reporting persons will "generally be able to rely on technology previously purchased and already deployed in the ordinary course of business (namely, computers and access to the internet) to comply[.]" *Id.* at 70286. It is inconceivable that *any* business newly subject to the Rule will incur no additional technology costs merely because it has a computer and Internet access. As ALTA pointed out in part, "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." (Doc. 19-23 - PageID 10783 (ALTA Comment on the NPRM)); *see also* ALTA Survey (one respondent "spent hundreds of hours modifying their title production system to help identify transactions and also collect the needed information."). FinCEN brushed off such comments by blaming industry for not quantifying the technology costs associated with a Report, which FinCEN proposed *only* after publishing the Rule. 89 Fed. Reg. 70258, 70286.

C. **<u>FinCEN's Training Costs Analysis Is Severely Flawed</u>**

Prior to publishing the proposed Report, FinCEN estimated that it would take 75 minutes for an initial training and 30 minutes for an annual refresher training. *Id.*

at 70285 (Table 2). This estimate was the same as the initial estimate in the NPRM. 89 Fed. Reg. 12424, 12453. FinCEN fashioned its training model after its 2016 estimates for the Customer Due Diligence ("CDD") Rule and added a slight increase. The CDD Rule, described *infra*, requires financial institutions to identify and verify the beneficial owners of legal entity customers upon account opening. Thus, FinCEN based the Rule's cost estimate on an already low-balled figure developed for sophisticated banks with extensive AML experience—not for title and settlement professionals, who lack both that experience and institutional infrastructure. ALTA responded to the NPRM, observing that actual experience suggests that upfront training costs are likely to be double:

> Industry experience with implementing new rules, specifically TILA-RESPA Integrated Disclosures (TRID) in 2015,[3] 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 [R]ule. 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 [R]ule and within the first year to help smooth out the process.

(Doc. 19-23 - PageID 10783 (ALTA Comment on the NPRM).) Further, ALTA offered the above estimate before FinCEN issued the proposed Report or made clear that it would not permit filers to indicate that they could not report certain

[3] TRID is a rule integrating the mortgage forms required under the Truth-in-Lending Act and the Real Estate Settlement and Procedures Act. *See* 12 C.F.R. § 1026.19.

information because they could not obtain it from third parties. Training—including the education of third parties—in fact has proven to be difficult. *See* ALTA Survey (noting in part that the lack of clarity regarding how the Rule should be applied and what information was required "often translated into addition time, training and risk for companies trying to ensure compliance.").

FinCEN slightly increased the Rule's estimated training time from its CDD Rule estimate because it admitted that the only group with some experience with FinCEN reporting are persons who had filed the much more limited real estate Geographic Targeting Orders ("GTOs"). 89 Fed. Reg. 70258, 70285. FinCEN did not explain *how* it determined its slight adjustment. Regardless, the adjustment plainly fails to capture the true trainings costs for small businesses with no prior AML compliance experience, and which—unlike banks opening customer accounts—cannot effectively require third parties to provide sensitive information. Further, the GTO forms had monetary thresholds and about only half of the fields required by the Report. More importantly, the GTOs were much simpler than the Rule. For example, the GTO reporting forms defined a "beneficial owner" subject to reporting simply an "individual who, directly or indirectly, owns 25% or more of the equity interests of the Legal Entity purchasing real property in the Covered

Transaction."[4] This definition is much easier to apply than the Rule's definition of "beneficial owner," discussed *infra*, which incorporates the convoluted concept of "control persons" which FinCEN applied under the CTA but then abandoned because it produced only marginal benefits. Finally, only 125,212 GTOs were filed from 2017 to 2024. (Doc. 19-17 - PageID 9934). The GTOs are a poor guide for determining the costs of the 800,000+ complex Reports required annually.

Noting that commenters urged that "the amount of time needed for—and frequency of—training needed to adequately prepare staff for compliance would be higher," FinCEN still declined to adjust its estimates. 89 Fed. Reg. 70258, 70285. FinCEN instead stated that its estimates "pertain only to those contemplated activities identified (developing general understanding of the rule and firm-specific compliance policies and procedures)[,]" and that it would estimate training costs for the preparation of the Report later. *Id*. at 70286. Putting aside that FinCEN later only estimated another 30 minutes of training for the Report, 89 Fed. Reg. 89700, 89703, FinCEN failed to acknowledge the simple, basic point of the commentators: the lack of AML focus and reporting experience, coupled with the complexity of the Rule and the Report, will require many hours of training for ALTA's membership.

---

[4] FinCEN, Geographic Targeting Order (April 14, 2025), https://www.fincen.gov/system/files/shared/RRE-GTO-Order-April-14-2025-FINAL508.pdf.

D. <u>FinCEN's Recordkeeping Cost Analysis Is Severely Flawed</u>

The Rule does not require a reporting person to keep copies of the filed Report. 89 Fed. Reg. 70258, 70276. FinCEN therefore considers recordkeeping costs to include only "those associated with creating and/or collecting the necessary documents, storing the records in an accessible format, and securely disposing of the records after the required retention period has elapsed." *Id*. at 70286. FinCEN estimates that a reporting person without a designation agreement will spend an average of one hour and ten cents per transfer for recordkeeping. *Id*. at 70286-87.

FinCEN believes that no requirement to retain a Report will obviate risks relating to data security and costs associated with the retention of records. *Id.* at 70276. FinCEN likewise restricted its recordkeeping analysis to only costs related to "low risk" records, *i.e*., designation agreements and certifications as to BOI. FinCEN relied on this belief to dismiss commentator concerns about the costs associated with new or upgraded software and "certain non-monetary costs in the form of increased technology and cybersecurity related risk." *Id.* at 70287. Under FinCEN's reasoning, by not being *required* to store "high risk" information, such as copies of filed Reports containing BOI, a small business facing the Rule's new requirements has only marginal recordkeeping costs. This prediction is baseless and ignores FinCEN's own warnings about failing to comply with the Rule. Many reporting persons invariably still will retain BOI, *particularly if they wish to defend* *against downstream FinCEN claims of failure to file required Reports*. BOI is the most sensitive information because it includes full legal name, address, citizenship and an IRS identifier (which usually will be a Social Security Number). Thus, the Rule in practice leads reporting persons to retain information that identity thieves and hackers find to be most valuable. Further, the Rule envisions that reporting persons may obtain a "certification form" from the transferee regarding the BOI of the transferee, upon which a reporting person may rely "absent knowledge of facts that would reasonably call into question the reliability of the information provided to the reporting person, if the person providing the information certifies the accuracy of the information in writing to the best of the person's knowledge." 31 C.F.R. § 1031.320(j)(2). Even if the certification form itself does not contain BOI, a reporting person still will be pressured to retain BOI data because a certification with no context will have limited value for defending against any claimed Rule violations.

Reporting persons thus will incur substantial costs to ensure that customer information is safely obtained and stored. Moreover, the Rule's required upfront process of demanding sensitive personal information has created rampant pushback by consumers. *See* ALTA Survey (85% of respondents indicated that buyers or sellers expressed significant concerns about data privacy and security).[5]

---

[5] Indeed, FinCEN has warned the public of scammers targeting persons trying to report BOI to stealing money or personal information. FinCEN, FinCEN Alert on Fraud Schemes Abusing FinCEN's Name, Insignia, and Authorities for Financial

II. The Rule's Claimed Benefits Are Speculative

Although the costs to be imposed upon industry by the Rule are clear, the purported benefits of the Rule's reporting regime are entirely speculative. This is a direct result of the fact that FinCEN abandoned any sort of tailored approach and instead has asserted that it has the authority to declare a vast category of routine financial transactions as inherently "suspicious" and subject to statutory reporting requirements. Despite these broad costs, the Rule offers extremely limited benefits to law enforcement. FinCEN has openly acknowledged that the Rule is an intentional dragnet, requiring complex annual reporting of nearly a million routine transactions now labeled "inherently suspicious."

A. FinCEN Acknowledges that BOI Reporting Has Marginal Value

Although the Report requires many details, FinCEN has made it clear that the heart of the Rule—its core mechanism to address money laundering—is, of course, the reporting of BOI of transferee entities. *See, e.g.*, 89 Fed. Reg. at 12424, 12426 (emphasizing the use of "shell companies" to "mask true beneficial ownership"). This reporting is the true motive behind the Rule. However, FinCEN has acknowledged that BOI reporting, in fact, yields only "marginal" and "speculative"

Gain (Dec. 18, 2024), https://www.fincen.gov/system/files/2024-12/Alert-FinCEN-Scams-FINAL508.pdf.

benefits, especially when BOI reporting is imposed on law-abiding small businesses. That is exactly what the Rule seeks to do, at the expense of ALTA members.

FinCEN originally issued very broad and costly regulations for BOI reporting for the CTA (the "CTA Regulations"). 87 Fed. Reg. 59498 (Sept. 30, 2022). The CTA Regulations required millions of small businesses to report their beneficial owners. As with the Rule, the preamble to the CTA Regulations argued that they sought to combat money laundering and enhance national security, that those goals required the collection of BOI, and that a reporting database was needed because the usual means of gathering investigative leads and evidence were cumbersome. *Id*. at 59498-59507. Like the Rule, the CTA Regulations were extremely complex.

Despite these initial and emphatic pronouncements, FinCEN ultimately acknowledged that, in fact, the purported benefits of BOI reporting had been grossly overstated, and that the costs for domestic small businesses were not acceptable:

> The Secretary . . . has determined for purposes of this interim final rule that the reporting of BOI by domestic reporting companies and their beneficial owners ''would not serve the public interest'' and ''would not be highly useful in national security, intelligence, and law enforcement agency efforts to detect, prevent, or prosecute money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or other crimes.'' The Secretary is aware that most domestic reporting companies that are not already covered by a statutory exemption are small businesses and that any regulations affecting them must recognize this fact.

FinCEN, *Beneficial Ownership Information Reporting Requirement Revision and Deadline Extension*, 90 Fed. Reg. 13688, 13691 (March 26, 2025) (interim final rule narrowing BOI reporting requirements of the CTA to require only entities previously defined as "foreign reporting companies" to report BOI and exempting entities previously defined as "domestic reporting companies" from reporting requirements).

Using language directly applicable to the Rule and ALTA's membership—the vast majority of which are, as FinCEN acknowledges, small businesses—FinCEN explained:

> The vast majority of domestic small businesses are legitimate and owned by hard-working American taxpayers who are not engaged in illicit activity. The Secretary has assessed that exempting them would ensure that the Reporting Rule is appropriately tailored to advance the public interest, considering the burdens imposed by the regulations without sufficient benefits.

Id. at 13691. FinCEN conceded that its previously sweeping claims as to the benefits of BOI reporting—which, like the preamble to the Rule, stressed the perils of so-called "shell companies"—in fact lacked robust analysis:

> [I]t is unclear that the marginal benefits of the BOI that will no longer be reported would be comparable to the value of similar [foreign] entities to which the reporting requirements still apply. As FinCEN has not yet been able to conduct the kinds of robust quantitative analysis necessary to estimate the incremental value of such intelligence, it recognizes that its estimated values to date have been partially speculative, albeit informed by feedback from both domestic and international partners in law enforcement and national security.

Id. at 13694.

It is entirely arbitrary for FinCEN to admit that BOI reporting in fact yields only "marginal" benefits and yet continue to defend the substantial costs of the Rule which ALTA's membership—law-abiding, small businesses—will have to bear. The Rule is actually even more burdensome than the now-abandoned domestic CTA requirements because the Rule's form is more complex, and the Rule forces title and settlement agents to collect BOI from third parties, not report their own BOI.

B. <u>FinCEN's Claimed Data Cannot Support the Rule</u>

FinCEN nonetheless tries to justify the Rule by generally emphasizing the value of fighting money laundering and terrorism—a fight with which no one can or will disagree, in the abstract. But details matter, and the data offered by FinCEN to justify its expansive and costly dragnet imposed on the members of ALTA neither add up nor meaningfully advance the agreed-upon goals of combatting illicit finance.

To uphold the Rule, the District Court adopted a very broad definition of "suspicious" for the purposes of what Congress authorized FinCEN to require in a reporting form. This broad definition implies, in effect, that the law enforcement value of the Rule can be limited when weighed against the costs to industry. However, even if one accepts such a broad definition, the basis for, and practical consequences of, the Rule do not even come close to either satisfying the most expansive definition of "suspicious" or supporting the Rule's claimed benefits.

FinCEN's Advance Notice of Proposed Rulemaking (ANPRM) cited a study finding that a total of $2.3 billion was laundered through the *entire* U.S. real estate market between 2016 and 2021. 89 Fed. Reg. 69589, 69591 (Dec. 8, 2021).

However, because the total combined residential and commercial real estate sales in 2021 alone was valued at $3.409 trillion (*see* Doc. 19-22 - PageID 10348 (National Association of Realtors' Comment on the ANPRM)), the money laundered through the entire real estate industry during the five years leading up to 2021, according to FinCEN, *made up less than .07 of one percent of 2021's total sales*, without even considering the preceding five years' transactions. Neither the NPRM nor the Final Rule made any findings on the estimated total amount of funds laundered through the U.S. real estate market for any period of time, nor did they make any findings on the amount of funds which might be laundered through the 800,000+ annual Reports.

FinCEN instead relies heavily on the results of the prior real estate GTOs and invokes the claim—unsupported by publicly-available evidence—that 61% of 53 federal money laundering cases involving residential real estate involved counties not covered by the GTOs. 89 Fed. Reg. at 70260 FinCEN's conclusion is: the Rule therefore also should apply to every other county in the United States. This argument lacks basis. According to the U.S. Census Bureau, there are 3,143 counties in the United States.[6] The most recent prior real estate GTOs applied to slightly over 60 counties, which FinCEN selected as the counties most likely to produce money laundering cases. This means that, per FinCEN's own statistics, about 32 money

[6] *See* U.S. Census Bureau, Slow Growth Impacts Nation's Largest Counties Hardest (Mar. 26, 2026), https://www.census.gov/newsroom/press-releases/2026/2025-popest-metro-micro-counties.html.

laundering cases occurred in over 3,000 counties—i.e., about one case per every 99 counties. FinCEN used this distorted data to conclude that every other location in the U.S. also must be subject to the full requirements of the Rule. This unsupported conclusion will impact many of ALTA's small members.

FinCEN's reliance on the prior real estate GTOs suffers from another selection bias problem: FinCEN attempts to use its selective results from the GTOs—again, not explained or subject to public scrutiny—to bootstrap a national reporting requirement upon all counties without reference to monetary amount or actual suspicious behavior. However, the prior real estate GTOs (supported, unlike the Rule, by explicit statutory authority under 31 U.S.C. § 5326) all involved monetary thresholds, unlike the Rule, thereby again skewing the results from the prior GTOs.

Finally, FinCEN tries to justify the Rule by relying on 31 U.S.C. § 5318(g)(5)(D), a relatively new BSA provision requiring FinCEN to establish "streamlined" and automated processes for categories of reports which reduce the burdens imposed upon persons required to report but yet do not diminish the usefulness of such reports to law enforcement. This is particularly perverse. The purpose of this "streamlined" provision was *not* to allow FinCEN to dramatically expand the substantive *types* of transactions subject to SAR reporting, thereby increasing costs to industry. Rather, the purpose of this provision—which was the product of years of spirited debate and criticism in the AML compliance professional community—was to *reduce* the existing BSA reporting costs for industry by encouraging FinCEN to simplify the very complicated *forms* of reports already required under existing statutory authority, such as the lengthy traditional SAR form.[7] This provision was responding to the over four million statutorily-authorized SAR forms now filed annually. Many of these filings result from so-called "defensive filing"—a well-recognized phenomenon in which financial institutions file SARs to placate regulators, even when the reports provide little actual utility to law enforcement. This overload of defensive SARs, untethered to clear criminality, creates "white noise" that is often useless. Indeed, the U.S. Department of the Treasury has acknowledged that "SARs should deliver better outcomes by providing law enforcement the most useful information—not by overwhelming the system with noise."[8] FinCEN has turned the streamlined provision on its head.

C. FinCEN's Claims Regarding the Rule's Benefits Have No Support

Despite—or perhaps because of—the fact that the Rule will produce only very limited Reports of actually suspicious transactions amongst the over 800,000+

---

[7] *E.g.*, Am. Bankers Ass'n, Review of Bank Secrecy Act Regulations and Guidance, at 8-9 (Feb. 14, 2022), https://www.aba.com/advocacy/policy-analysis/ltr-to-fincen-20220214.

[8] FinCEN, FinCEN Issues Frequently Asked Questions to Clarify Suspicious Activity Reporting Requirements (Oct. 9, 2025), https://www.fincen.gov/news/news-releases/fincen-issues-frequently-asked-questions-clarify-suspicious-activity-reporting.

anticipated annual Reports, FinCEN attempts to justify the burdens on industry by purportedly quantifying the Rule's "intangible" value to law enforcement and the public. FinCEN suggests vaguely that "it might be inferred that a tacit expectation underlying this rulemaking is that the rule will generate intangible benefits worth over $500 million per year." 89 Fed. Reg. 70258, 70285. That number is untethered to any objective analytical process. FinCEN's own words acknowledge as much. Further, the candid acknowledgements by FinCEN in the CTA context regarding the lack of value of BOI data and the need for a "robust quantitative analysis," *see supra*, directly contradict any "possible inference" of a "tacit expectation" that the Rule's BOI reporting might have "intangible benefits" worth over $500 million per year.

When publishing the Rule, FinCEN did not perform any "robust quantitative analysis" on its benefits, but instead merely noted a handful of enforcement cases which involved real estate. *See* 89 Fed. Reg. 70258, 70259 n.12. The Federal Register reflects no attempt by FinCEN to provide *any* explanation as to the claimed benefits of the Rule, much less any objectively defensible reasons. ALTA understands that it is often not possible for a regulator to quantify with precise accuracy the societal benefits of a proposed regulation. Nonetheless, it is not permissible—even in the context of anti-crime or national security issues—for a regulator to announce, with no analysis, a round, massive monetary value assigned to the regulations. *Cf. Tex. Ass'n of Money Servs. Bus. v. Bondi*, 783 F. Supp. 3d

963, 982 (W.D. Tex. 2025) (preliminarily enjoining FinCEN rule as likely APA violation, explaining that "[t]o act reasonably, the agency 'must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made'" (quoting *Motor Vehicle Mfrs. Ass'n of the U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983))).

Here, FinCEN did not engage in an "analysis" in any traditional sense. Rather, FinCEN's claimed number of $500 million in benefits appears to be an outcome-oriented pronouncement creating a large, round plug figure to justify FinCEN's flawed estimate of the costs, the mid-point of which is roughly equal to this $500 million plug figure. Even worse, the NPRM contained nothing about the Rule's quantitative benefits, which means that industry could not assess or comment on the newly-announced $500 million plug figure suggested to support the Rule.

D. <u>The Existing CDD Rule Already Attains the Rule's Goals</u>

FinCEN also overstates the Rule's purported benefits by grossly understating the importance and functionality of the existing CDD Rule, referenced *supra*, which already accomplishes much of the main goal of the Rule: the collection of BOI for entities, including the vast majority of the same real estate transferees covered by the Rule. *See* FinCEN, *Customer Due Diligence Requirements for Financial Institutions*, 81 Fed. Reg. 29398 (May 11, 2016); 31 C.F.R. §§ 1010.230(a), (b).

The CDD Rule, effective since 2018, is a key component of the U.S. AML regulatory scheme. It is a broad requirement for banks and other financial institutions to identify and verify the BOI of legal entity customers, subject to certain limited exceptions, when opening new accounts. *Id*. The CDD Rule also requires covered financial institutions to understand the nature and purpose of customer relationships to develop risk profiles, conduct ongoing monitoring to identify and report suspicious transactions, and maintain and update customer information. *Id*. FinCEN originally estimated that the CDD Rule applies to about eight million new accounts annually, 81 Fed. Reg. 29398, 29437, and covered financial institutions must retain required records for at least five years. 31 C.F.R. § 1010.230(i). Now, to exaggerate the purported need for the Rule, FinCEN tries to minimize or obscure the key role of the CDD Rule, which already provides the government with access to the very same BOI. FinCEN may belittle the role of the CDD Rule for the purposes of this litigation, but covered financial institutions know well its demands.

When responding to multiple commentators noting that the then-proposed Rule had limited utility given the established CDD Rule, FinCEN urged that the Rule was still necessary because it "covers non-financed transfers of residential real estate that do not involve financial institutions covered by the CDD Rule." 89 Fed. Reg. 70258, 70280. That argument is another red herring. Funds obtained from transactions covered by the Rule inevitably will go into bank accounts held by the entities covered by the Rule, the BOI of which already will have been gathered under the CDD Rule by financial institutions covered by the BSA. Thus, BSA-regulated institutions already will be monitoring transactions covered by the Rule and flowing through their accounts for truly suspicious activity. FinCEN may attempt to suggest various strained scenarios in which this would not be the case, but this basic practical reality remains. Moreover, the exceptions offered by the Rule and the CDD Rule largely overlap, because both are aimed at collecting BOI from "small" entities. *Compare* 31 C.F.R. §§ 1031.320(n)(10)(ii)(A) to (P) (exceptions to the Rule) *with* 31 C.F.R. §§ 1010.230(e)(2)(i) to (xxi) (exceptions to the CDD Rule). Any claim that the Rule is needed because the CDD Rule does not apply to "suspicious" transactions within the residential real estate market misses the point: the CDD Rule already captures, as a matter of course, the BOI of entities conducting all real estate transactions (both as buyers and sellers), "suspicious" or otherwise.

Second, FinCEN stated that the Rule "would also collect additional information relevant to the real estate transfers that is currently not collected under the CDD Rule." 89 Fed. Reg. 70258, 70280. Although it is true that the Rule would collect details such as the price of the residence being sold, that sort of information is already easily accessible to the government through other means. More importantly, the CDD Rule already collects the key information that is at the heart of the Rule and its stated necessity: the BOI regarding smaller entities. That BOI information is directly available to the bank's regulator and available to law enforcement through subpoena or other legally-sanctioned request. Indeed, FinCEN admitted when promulgating the Rule that law enforcement already can obtain the information required by the Rule but may have to issue subpoenas or otherwise expend some effort to obtain that information. 89 Fed. Reg. 70258, 70259. The reality is that, almost always, law enforcement will look to the BOI collected through the Rule only to augment *already existing* investigations of those same beneficial owners. Those investigations, as already discussed, are quite rare. And when such investigations do exist, law enforcement invariably will issue multiple subpoenas—which are easy to generate—to banks, title insurance companies and any other business that may have touched transaction. Thus, the work that the Rule supposedly will save law enforcement in select cases will occur anyway. However, the Rule nonetheless will force ALTA's members to perform considerable work in the other 800,000+ annual transactions that will not be relevant to law enforcement.[9]

[9] FinCEN may argue that the Rule's heavy costs are justified because it seeks the BOI of trusts not already covered by the CDD Rule. First, the CDD Rule *does* apply to any trust entity created through a State, Tribal or foreign government filing. 31 C.F.R. § 1010.230(e)(1). Although the Rule also applies to certain trusts not created through such filings, the number of such trusts covered by the Rule is marginal, thereby rendering the benefits of their reporting marginal: FinCEN relied on a study that found that single-property residential purchases identified *any* type of trust as the buyer in *only 3.3 percent* of transactions. 89 Fed. Reg. 70258, 70281.

CONCLUSION

The Rule forces ALTA's small business members to expend significant compliance costs to try to understand and implement the Rule by obtaining BOI which it cannot compel third parties to provide, using a complicated and confusing form for almost one million transfers annually. Meanwhile, such BOI is already collected and readily accessible to regulators and law enforcement when and if they actually may need it in a handful of cases through financial institutions regulated by the BSA. FinCEN imposes these significant costs on ALTA's members in the service of administrative convenience by inflating the Rule's claimed benefits without sufficiently rigorous analysis, and without the statutory authority to require the wholesale reporting of routine transactions which are not actually suspicious.

Accordingly, the Court should reverse the District Court's decision.

Dated: August 7, 2026

Respectfully submitted,

/s/ Peter D. Hardy
Peter D. Hardy
peter.hardy@hklaw.com
Madeline Schonberger
madeline.schonberger@hklaw.com
HOLLAND & KNIGHT LLP
1650 Market Street, Suite 3300
Philadelphia, Pennsylvania 19103
Telephone: (215) 252-9600

/s/ Laura B. Renstrom
Laura B. Renstrom
laura.renstrom@hklaw.com
Daniel Mahfood
daniel.mahfood@hklaw.com
HOLLAND & KNIGHT LLP
50 North Laura Street, Suite 3900
Jacksonville, Florida 32202
Telephone: (904) 353-2000

Counsel for *Amicus Curiae*, the American Land Title Association

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

I certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Times New Roman, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(i) because it contains 6,460 words, excluding the parts exempted by Rule 32(f), according to the count of Microsoft Word.

Dated: August 7, 2026

/s/ Peter D. Hardy
Peter D. Hardy
Counsel for *Amicus Curiae*, the
American Land Title Association

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2026, the foregoing amicus brief was electronically filed with the Clerk of the Court for the U.S. Court of Appeals for the Eleventh Circuit by using the Appellate CM/ECF System. Participants in this case who are registered CM/ECF users will be served electronically by the Appellate CM/ECF System.

Dated: August 7, 2026

/s/ Peter D. Hardy
Peter D. Hardy
Counsel for *Amicus Curiae*, the
American Land Title Association