**Financial Crimes Enforcement Network**

**U.S. Department of Treasury**

**Subject:** Ex Parte Communication with American Escrow Association (AEA)

**Docket:** 2024–02565, Notice of Proposed Rulemaking on Anti-Money Laundering Regulations for Residential Real Estate Transfers

**Meeting Date:** March 6, 2024

**Meeting Time:** 9:30-10:15am

**Meeting Location:** FinCEN office at 1801 L St NW, Washington DC**,** 20006

**Attendees from FinCEN:** Staff

**Attendees from AEA:**

* Rebecca Landry (CO) President
* Jennifer Smith (NV) Incoming President
* Colleen Graves (CA) Secretary
* Heather LeBlanc (AZ) Treasurer and Past President
* Tiffannie Hobgood (AZ) Immediate Past President
* Rosanna Medeiros (CA) Past President and current CA Escrow Association State President
* Art Davis, AEA Senior Policy Advisor (DC Rep since 1992)

**Summary of Ex Parte Communication:**

General Support for NPRM

AEA expressed appreciation for the balance struck by the NPRM, particularly the proposal of a limited reporting requirement instead of a full AML program obligation.

Reporting Person Access to Information

As reporting persons, the settlement agents represented by AEA would, as is described in the NPRM, “have access to some, but not all, of the reportable information.” AEA stated that working group discussions of the proposed rule raised concerns that some potentially reportable information is not currently available to settlement agents, and some information may be collected by settlement agents, but is not retained.

Settlement agents may be well-equipped in time, manner, and mode to comply, but the main issue is the effort that would be required to collect the proposed information. For example, settlement agents in all-cash transactions do not currently collect certain information about the buyers, such as social security numbers (though they do typically collect social security numbers of sellers). The settlement agent would need to gather that information from the consumer or other person involved in the transaction. AEA stated that there were concerns about collecting this information when settlement agents are sometimes only present at one point in the transaction. In the GTO context, independent settlement agents often do not retain information and instead send it to a more centralized covered business that stores it.

Regarding the requirement to gather source of funds information, settlement agents would not necessarily have it on hand for wire payments. The account number may be abbreviated to four digits, and gifts or other information on payments from third parties may not be available.

In the GTO context, it was initially difficult for less experienced staff to collect the required information from the buyer. They would need to go back to the buyer and make it clear that the information was needed to close the sale. Some buyers push back.

The rule should make clear that other persons involved in the transfer have a clear duty under law to help provide information to the reporting person.

Reporting Cascade

AEA did not have concerns with the concept of a reporting cascade.

As proposed, AEA’s member settlement agents would likely be at the top of the proposed reporting cascade, as their names are on the settlement statement.

AEA believes that real estate agents would be better suited to be at the top of the reporting cascade due to their closer relationship with the buyer and seller.

AEA believes that all persons involved in real estate closings and settlements should have a duty gather required information for one person to file.

In some states, such as Washington and Missouri, split settlements occur where each party has their own settlement company.

It is helpful that the NPRM currently states that the reporting person is the business, rather than the individual performing the cascade action.

Designation Agreements

AEA discussed the possibility of having third-party vendors perform the reporting function. Whether a settlement agent uses such a vendor would depend on the cost and how the vendor would access the settlement agent’s information.

Transferee Trusts

In a traditional loan, you are not allowed to purchase a house and then immediately transfer it to a trust, as it violates the requirement that the house be immediately occupied as a residence. That is not the case with all-cash purchases, and such sequential transfers may result in multiple reports.

In terms of gathering information on trusts, state laws differ as to what is available. For example, in most states, such as Arizona, settlement agents have access to a trust certification listing certain information about a trust—the settlement agent would not have access to the trust document itself. Some settlement agents believe that asking to see a trust document would seem like an invasion of privacy to clients, and some clients refuse to provide this information. Settlement agents may only know the trustee, but some states require that the deed list trust beneficiaries.

Seller-Financed Sales

There has been a recent push to get title insurance for seller-financed sales, for the owner’s protection.

Definition of Residential Real Property

AEA expressed a lack of clarity as to whether the proposed rule would require reporting on sales of large apartment buildings or spaces that appear to have mixed commercial and residential use.

AEA also stated that settlement agents do not know whether properties are zoned or permitted for residential use and that real estate agents would be more likely to know this information.

Necessity of Information

AEA expressed some confusion as to why seller information would be collected.

Collection of beneficial ownership information is duplicative with the Corporate Transparency Act (CTA). FinCEN should emphasize the functional difference between the CTA and this proposed rule.

Statement of Purpose

The form may benefit from including a statement that clarifies the purpose of the form, such as stating that the form is necessary to collect aggregate information that, in its totality, creates useful lead information for law enforcement. Such a statement would make it clear to both the filer and the parties to the sale why the report is both necessary and important.

Liability Concerns

Collecting additional personally identifiable information would increase liability and data protection costs and raises concerns about data breaches.

Settlement agents are limited purpose agents who follow instructions. Expansion of the settlement agent’s role may create additional liability beyond that limited function.

Settlement agents would need to interpret the NPRM’s requirements. AEA emphasized that settlement agents are not attorneys.

Burden

The burden of the proposed rule would fall hardest on small businesses, including minority and women-owned businesses.

Costs associated the proposed rule stem from form preparation, data collection, data storage, software systems, and potential legal representation. The additional costs imposed by the rule may be passed on to the consumer—possibly for all purchases, and not just all-cash ones.

Thirty percent of sales are all-cash, so the NPRM will have a significant impact.

Geographic Targeting Orders (GTOs)

The burden on title insurance companies would be decreased if the Residential Real Estate GTOs were not expanded while a final rule is being contemplated.

Alternative: FinCEN-Controlled Portal

As an alternative, AEA suggested that FinCEN create a portal where the buyer would report information directly to FinCEN. Once submitted, the portal would generate a certificate that the buyer could present to the reporting person.

Effective Date

It may take settlement agents a year to get everything up and running. New software can sometimes take a year or more to prepare. Testing alone can take six months. Time would also be needed to prepare training guides.