**Listening Session Regarding Proposed Rule “Anti-Money Laundering Regulations for Residential Real Estate Transfers”**

This document summarizes a listening session that the U.S. Department of the Treasury and its Financial Crimes Enforcement Network (FinCEN) held with representatives of the investment adviser industry about the notice of proposed rulemaking titled *Anti-Money Laundering Regulations for Residential Real Estate Transfers* issued on February 6, 2024 (Docket Number 2024-02565) (NPRM). FinCEN is adding this summary of the listening session to the docket for the NPRM to help ensure that the public is aware of a series of roundtables that took place and understands the information that was provided to Treasury and FinCEN in this session. Treasury and FinCEN did not provide any new substantive information about the NRPM or substantively respond to any comments during the listening session.

DATE: April 5, 2024

TIME: 3 p.m. – 4 p.m., Eastern Time

LOCATION: Virtual

TREASURY ATTENDEES:

* Treasury Undersecretary for Terrorism and Financial Intelligence Brian Nelson
* FinCEN Deputy Director Jimmy Kirby
* Staff of FinCEN, Office of Terrorist Financing and Financial Crimes staff, and Treasury’s Office of the General Counsel

OTHER ATTENDEES:

* Kenneth R. Trepeta Esq., President and Executive Director, Real Estate Service Providers Council, Inc. (RESPRO)
* Steve Gottheim, General Counsel, American Land Title Association (ALTA)
* Melissa Murphy, (ALTA)
* Nia Duggins, Policy Representative for Business Issues, National Association of Realtors (NAR)
* John (Jack) A. Terrill, Past President, American College of Trust and Estate Counsels (ACTEC)
* Lisa Tyler, Past President, American Escrow Association (AEA)
* Art Davis, Senior Policy Representative (AEA)

SUMMARY:

ALTA stated that its members say that while some of them have experience filing Geographic Targeting Order reports, and therefore understand a similar filing process to that under the proposed rule, most have no experience with this type of reporting requirement. There are 16,000 title companies across the country, with 90% making less than $1 million in annual revenue. The proposed rule would have these title insurance companies collect much more data than they are used to. Major concerns from their members include: difficulty understanding the mechanics of information collection, how to work with real estate agents to collect information, and how to get information from customers.

AEA agreed with ALTA’s comments and added that certain data points included in the proposed rule are not readily available to reporting persons in the course of doing business. Settlement agents would need to work with other industry participants to collect information. AEA stated that any final rule should articulate that all persons involved in the transaction have a legal duty to actively participate and assist the settlement agent in collecting information. AEA also said its members were concerned that collecting the information required under the proposed rule would mean settlement agents would be involved in unauthorized practice of law.

AEA also stated that the burden estimate in the NPRM is skewed and that, due to the consolidation of title insurance companies, the big four title insurance companies would bear exorbitant costs and costs would not be spread evenly across the industry. These companies would need to increase closing costs across all transactions, not just the non-financed transactions that the proposed rule would cover. Furthermore, title insurance companies may not be able to offer one customer a lower rate when they participate in a residential real estate transfer not covered by the rule, while charging a customer participating in a covered transaction a higher rate because it would be considered discriminatory. AEA also noted that reporting persons would need to investigate whether a transfer is a covered transfer as part of every closing.

ACTEC represents about 2,400 fellows, mostly in private practice, who conduct work for individuals and families engaging in estate planning. Many of these fellows work on residential real estate transfers as part of the estate planning process. ACTEC noted that it admired the idea of a lighter and tailored version of comprehensive AML program requirements, but was concerned that lawyers would be governed by the BSA under the proposed rule. ACTEC stated that the residential real estate transfers facilitated by its members generally do not involve title companies or settlement agents, as most of the transfers involve individuals transferring their own property from themselves to a trust in which they are the beneficiary and settlor. ACTEC believes that this type of transfer is not high risk for money laundering and coverage by the proposed rule would mean that hundreds of thousands of low risk transfers would be reported each year. The same would be true for transfers of property to an LLC owned by the same person. These would be reportable by lawyers alone and are basic estate planning techniques and are not the type of transaction FinCEN wants reported. Lawyers also take very seriously not disclosing confidential information. ACTEC also asked FinCEN to consider cross-referenced definitions from the Beneficial Ownership Information Reporting Rule and stated that lawyers would not have access to banking information the proposed rule would ask them to collect. ACTEC was not concerned with the overall concept of the proposed rule, but felt that over-application of reporting obligations in a way that captures transfers that are not suspicious or high risk should be avoided.

AEA agreed with ACTEC’s comments and urged FinCEN to consider exempting these types of transfers, noting that in such scenarios, the initial home purchase by an individual often involved a mortgage, so it is likely some due diligence was already performed. AEA also echoed concerns about unauthorized practice of law and stated that title insurance companies and settlement agents may feel the need to send reporting forms to lawyers, thereby incurring greater costs.

ALTA said it was seeing increased requests for help from settlement agents learning how to file Geographic Targeting Order reports in recently added counties, and that there is often a steep learning curve. ALTA echoed ACTEC’s concerns call to exempt residential real estate transfers done for estate planning and gift tax planning purposes. Additionally, ALTA urged FinCEN not to require reporting persons to collect information that is not readily available to them, and specifically asked FinCEN to consider changing the proposed rule’s definition of residential real estate, as title insurance companies do not have access to zoning and permitting information. ALTA also stated that title insurance agents would not typically have access to information about payment details and that it may be challenging to collect in some situations. In general, they asked that FinCEN not require the collection of information that is not within a settlement agent’s training. For example, a settlement agent may not know how to determine whether a trust is revocable or irrevocable or who serves as the trustee or whether or not a legal entity is exempt. ALTA believed that many settlement agents would find it very challenging to perform this analysis and would likely have to hand it off to lawyers, which would add to the cost of the transfer and could delay the closing. ALTA expressed concern about the cost of the proposed rule, saying it is not clear how it would shake out in the industry. They also highlighted that in some states, passing charges on to consumers would need to be approved by a state regulator. ALTA also suggested that FinCEN describe what reporting persons should do if a customer refuses to provide information.

NAR expressed concern about the impact and cost of compliance for its title insurance counterparts and stated that affordability is a major concern for consumers. NAR supported the cascading reporting hierarchy in the proposed rule, but also asked that FinCEN take a risk-based approach so that any final rule is not overly broad. NAR stated its members would comply with any final rule and would support title insurance partners, but that NAR members feel that they may not be best positioned to collect the required information. NAR also expressed concern at the lack of anti-money laundering education for real estate agents at the state level and suggested that FinCEN should provide training and red flags for real estate agents to look for in real estate transfers.

AEA stated that one major title insurance company filed 7,000 Geographic Targeting Order reports Reporting 7,000 GTO reports last year and is on track to file more than 8,000 this year. The company was under the impression that the burden of this would be reduced with the introduction of the Corporate Transparency Act and FinCEN’s Beneficial Ownership Information Reporting Rule, but instead sees that the burden would increase under the proposed residential real estate rule. AEA stated that some legal entities purchasing homes that have already complied with the Beneficial Ownership Information Reporting Rule feel that they do not also need to comply with the Geographic Targeting Orders and that title insurance companies are therefore getting even more pushback than before when they try to collect beneficial ownership information or passports and driver’s licenses. AEA noted that this causes friction between customers and title insurance agents and that collecting this information would be duplicative and a waste of customer and industry time. AEA also stated that banking information that would be collected under the proposed rule is not readily available to reporting persons and asked FinCEN to reconsider collecting seller-side information under the proposed rule, as the seller is already public record on a deed.

RESPRO asked that FinCEN consider the person providing the information and whether they are suited to collect it and urged FinCEN to limit collection to information that is absolutely needed if it wants to be successfully at getting information from consumers, instead of encouraging people to hide information. RESPRO noted the market is currently tight and costs will likely be high for industry, so Treasury should consider avoiding adding costs wherever possible.