



February 7, 2022

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

Re: Docket Number FINCEN-2021-0005; RIN 1506-AB49: *Beneficial Ownership Information Reporting Requirements*

To Whom It May Concern,

The American Land Title Association (ALTA) supports FinCEN's proposed beneficial ownership information reporting regulation under the Corporate Transparency Act. ALTA continues to believe that to be successful, FinCEN should ensure the beneficial ownership database meets three main goals:

1. Require registration from as many entities as possible.
2. Ensure beneficial ownership data is reliable by imposing strict requirements on entities and their legal representatives.
3. Reduce the need for financial institutions like title companies to conduct duplicative due diligence on customers and instead rely on the validity of a FinCEN ID.

Our comments are informed by our members' experience with the real estate Geographic Targeting Orders (GTO) first implemented in 2016. Under those orders, ALTA members are asked to report real estate purchases by LLCs, corporations or equivalent entities in select cities where the purchase price exceeds \$300,000. According to FinCEN, the value of the GTO is the ability to help law enforcement in asset tracing. If law enforcement can access the robust beneficial ownership data, this should allow FinCEN to reduce the burden on title companies and utilize commercial data sources to trace assets. We also believe this project needs to be completed and robust before developing any regime around real estate reporting.

FinCEN is Right to Limit Exemptions to Only Those Outlined in the Act

The core value of any anti-money laundering (AML)/Combating the Financing of Terrorism (CFT) rule is transparency. This means public interest is best served by requiring the largest number of entities as required by law to file their beneficial ownership information. We support FinCEN's decision not to include additional exemptions for entities beyond those provided in the Corporate Transparency Act (CTA).

Asset tracing is the main tool available for law enforcement to interrupt money laundering. This requires law enforcement to have access to a robust beneficial ownership database with limited exemptions. The exemptions in this proposed rule should be limited to those required under the CTA. Ensuring that all corporate entities must report their beneficial ownership information via this proposed rule or via another regulation promulgated by a federal or state financial regulator is the best policy.

As we learned with the GTO, people will bend over backwards to change practices to avoid reporting if possible. Small businesses will benefit from a lack of additional exemptions. If the database is robust, FinCEN should be able to reduce more costly due diligence requirements imposed on small businesses when they conduct business with financial institutions like title companies. This is especially true if FinCEN, and other regulators under the authority in Sec. 5336(b)(1)(G), update their rules to allow title companies to collect and report a FinCEN ID in lieu of full beneficial ownership data.

Lastly, we support FinCEN's robust definition of reporting company. However, we believe that if the rule will limit application requirements to entities that must register with their state's Secretary of State, any customer due diligence (CDD) or GTO requirements should be similarly limited.

FinCEN Should Require Entities to File Enough Information to Satisfy the Obligations of Companies with a GTO or Customer Due Diligence Requirement

The cost benefit of the beneficial ownership database will only make sense if it can ultimately replace or reduce current CDD, know your customer (KYC) or GTO requirements. To do this, registered entities should have to provide as much information about their beneficial owners as regulators expect businesses to obtain and report under those requirements.

We believe that FinCEN should require entities to provide reliable and verified information about their beneficial owners and people primarily representing them. This includes the name of the entity, any parent organizations and the basic information from each beneficial owners and entity representatives' government issued identification that meets the requirements of the REAL ID Act. FinCEN should also explore using identity proofing and credential analysis tools like those used by remote notaries to validate submitted identifications.

The least costly solution is robust upfront data validation. With more reliable information at the front end, FinCEN will be able to reduce costs for everyone by ensuring the customers only submit their data once to FinCEN. Today's system of fragmented due diligence requires businesses to submit data multiple times to each financial institution they work with. This is considerably more burdensome and costly to small entities than reporting once at the front end.

To reduce costs, FinCEN should partner with state Secretary of States to coordinate the beneficial ownership application at the time of state registrations. We believe the time between registration with state officials and FinCEN should be shorter than 14 days. Further, FinCEN needs to put in place protocols to ensure submitted reports immediately result in the applicant getting a verifiable FinCEN ID. Often in real estate transactions the buyer's lawyer will delay creating the LLC until the transaction is closer to settlement. This prevents a wasted expense if the deal falls through. Without the ability to quickly gain a verifiable FinCEN ID, the operation of the beneficial ownership database could unnecessarily delay transactions.

Further, we believe FinCEN should build partnerships with state Secretaries of State to build Application Programming Interfaces (APIs) to submit application data at the time they create the entity. For law firms and others that create entities, this will help streamline the registration filing while staying within their transaction or practice management system. For financial institutions, this will allow FinCEN and industry to develop exchange protocols that make it faster to share data for CDD, KYC and GTO purposes.

Lastly, FinCEN should develop a process for batch registrations. There are a number of businesses that file a series of LLCs for their business. In the real estate context, this can include home builders and businesses that buy homes directly from individuals (commonly called iBuyers). Allowing these businesses to file for a series of related FinCEN IDs at one time will make it easier for them to comply with the rule's requirements.

Validating that a FinCEN ID is Connected to a Customer Should Satisfy Financial Institution Due Diligence Requirement

While not directly a part of this rulemaking, ALTA believes that the only way to provide a benefit that justifies the cost is to allow the beneficial ownership information system data to satisfy financial institution CDD or other reporting requirements. To do this, ALTA believes FinCEN should create two levels of data access to beneficial ownership information data. First, there should be a simple search to determine whether a FinCEN ID is valid and connected to a specific entity name or individual. This should be available to financial institutions or other industries with an AML/CFT requirement. Second, there should be a full data report for law enforcement. Financial institutions should be able to gain access to this data with customer permission but should not be required to collect this data as part of a CDD or GTO obligation.

This two-level access will help satisfy privacy concerns while ensuring that the rule reduces the costs and burdens on financial institutions and their customers. For most CDD and transaction reporting requirements, regulations should be updated to allow the limited data search tool to suffice. This should allow those reporting CDD requirements to focus more on helping law enforcement with asset tracing.

To make this possible, FinCEN should provide a tool similar to the Office of Foreign Assets Control (OFAC) Specially Designated Nationals and Blocked Persons List (SDN). When using this tool, someone should be able to check if a FinCEN ID is in the database and the legal name of the entity it is associated with. This validation tool will help business with a host of reporting requirements and customer ID programs without providing access to sensitive information about the entity.

Providing this limited SDN-like access will also reduce the number of financial institutions that will need access to the full entity data. For those entities that do need full data access, they should be able to go through a standardized vetting process to obtain clearance instead of needing to provide documentation for each search they submit.

Thank you for the opportunity to submit comments on the ongoing process of implementing the CTA and the development of a beneficial ownership database.

Sincerely,

A handwritten signature in red ink, appearing to read "Steve Gottheim", is positioned above the printed name.

Steve Gottheim
General Counsel