

ALTA Urges FinCEN to Give Title Entities Access to Beneficial Ownership Information System

Description

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ALTA submitted a [letter](#) in support of the development of the Beneficial Ownership Information (BOI) system being created by the Financial Crimes Enforcement Network (FinCEN).

BOI is a critical tool for combatting money laundering through real estate transactions. The [Geographic Targeting Orders](#) (GTOs) that many title companies must comply with 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,” ALTA said.

Currently, FinCEN has proposed to limit access to the BOI system to entities subject to the Customer Due Diligence rule.

ALTA recommended FinCEN broaden the scope of the rule 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,” ALTA said.

In September 2022, FinCEN issued a [final rule](#) requiring certain entities to file reports that identify two categories of individuals: the beneficial owners of the entity, and individuals who have filed an application with specified governmental authorities to create the entity or register it to do business. The regulations describe who must file a report, what information must be provided and when a report is due. These requirements are intended to help prevent and combat money laundering, terrorist financing, corruption, tax fraud, and other illicit activity, while minimizing the burden on entities doing business in the United States. The rules go into effect Jan. 1, 2024.

For reportable transactions under the GTO, title insurers are required to send FinCEN four 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,• ALTA wrote in its letter. • 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 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. •

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