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CDIAONLINE.ORG

Via Regulations.gov Federal eRulemaking Portal

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

Re: FinCEN Advance Notice of Proposed Rulemaking on Anti-Money Laundering Regulations for Real Estate Transactions (Docket Number FINCEN-2021-0007 and RIN 1506-AB54)

Dear Sir or Madam:

The Consumer Data Industry Association ("CDIA") is pleased to offer its comments in response to the above-docketed Advance Notice of Proposed Rulemaking ("ANPRM") by the Financial Crimes Enforcement Network ("FinCEN") concerning the implementation of the Bank Secrecy Act ("BSA") requirements relating to the collection, reporting and retention of information pertaining to potential money laundering associated with non-financed real estate transactions. CDIA greatly appreciates the opportunity to comment on this proposed rulemaking and provide feedback on issues impacting the consumer reporting industry.

CDIA is the voice of the consumer reporting industry, including the nationwide consumer reporting agencies, regional and specialized consumer reporting agencies, background check and residential screening companies, and others. CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals and to help businesses, governments and volunteer organizations assess risk and avoid fraud. CDIA members help to ensure fair and safe transactions for consumers, facilitate competition, locate crime victims and fugitives, reunite consumers with lost financial assets, help tenants secure apartments, assist employers in the hiring process, and expand consumers' access to financial and other products suited to their unique needs.

CDIA's Interest in the ANPRM

CDIA has an interest in the issues raised in the ANPRM because its member consumer reporting agencies ("CRAs") provide services to assist financial institutions, including banks and other creditors, and other entities involved in the real estate sector, including title companies, with their customer due diligence and other know-your-customer efforts. CDIA-member CRAs would therefore be affected by these anti-money laundering regulations for real estate transactions.

CDIA's Comments on Issues Raised in the ANPRM

CDIA makes the following comments on issues raised in the ANPRM, with reference to the questions presented in the ANPRM.

1. Commercial real estate transactions are complex and should be address separately from residential real estate transactions.

Question 27 asks whether FinCEN’s proposed rule should cover transactions involving non-residential real estate (e.g., commercial) and, if so, should these transactions be covered in conjunction with the regulation of residential real estate transactions or separately.

As FinCEN artfully discussed in the background section of the ANPRM, commercial real estate transactions are complex and inherently different from residential real estate transactions. While commercial transactions can present anti-money laundering risks and should be addressed by FinCEN, the differences presented by commercial transactions are stark enough that we believe separate treatment is warranted.

2. Transactions involving a quitclaim deed should be excluded from the definition of “non-financed transactions,” unless the quitclaim deed is used to transfer ownership to a trust.

Part C asks generally which real estate transactions FinCEN’s rule should cover. Specifically, **Question 33** asks how FinCEN should define “non-financed transactions.”

As FinCEN is likely aware, a quitclaim deed is usually used in a residential real estate transaction to transfer an interest in property without warranties of any kind. Thus, unlike a traditional warranty deed, a quitclaim deed does not guarantee to a buyer that the property is free from any liens or encumbrances or that the property has a clear title. In fact, a quitclaim deed only transfers exactly what the seller actually owns and nothing more. Quitclaim deeds are generally used to cleanup title ownership or to transfer property between family members or to transfer ownership in other non-sale real estate transactions.

Given that the focus of FinCEN’s proposed rule is to help fight money laundering, coupled with the fact that quitclaim deeds are typically used where there is no money exchanged, it seems reasonable to conclude that these transactions would pose a lower risk of potential money-laundering. As mentioned in the background section of the ANPRM, FinCEN is cognizant of the burden on reporting financial institutions. Removing transfers made via quitclaim deed would help to minimize this burden without jeopardizing national security or the integrity of the U.S. financial system. Additionally, our understanding is that quitclaim deeds exist, at least in part, as an easy mechanism for an individual to disclaim any ownership in a property. If FinCEN were to impose anti-money laundering-type requirements on these types of deeds, the result could in fact be to lessen the reason these types of deeds exist in the first instance or, in extreme cases, to chill the free transfer of property. For these reasons, we believe that quitclaim deeds should be excluded from anti-money laundering requirements.

One exception that FinCEN might consider, however, is if a quitclaim deed is used to transfer title from an individual to a trust. In that case, we believe some level of verification related to the trust would make sense. See the discussion below related to trusts.

3. Purchases by trusts should be included in the scope of FinCEN’s proposed rule.

Question 31 asks, among other things, whether FinCEN’s proposed rule should cover purchases by trusts.

As discussed by FinCEN in the overview of money laundering in real estate in the ANPRM, real estate can be purchased by trusts. Trusts can provide a mechanism for a true purchaser of real estate to disguise or obscure his/her identity. We know, and FinCEN has articulated in its ANPRM, that money launderers are more likely to use a mechanism that will not reveal the criminal's identity. For this reason, it is important that purchases of real estate by trusts be included in the scope FinCEN's proposed rule to provide more transparency and greater insight into the individuals behind the transaction. Likewise, because trusts can provide a level of anonymity for the individuals behind a trust (e.g., the trust name does not need to include the beneficiary or the maker of the trust), it may be difficult to verify a trust without additional information from the trust itself (e.g., trust document). Thus, we suggest FinCEN consider a careful approach in what types of information FinCEN may require as part of its recordkeeping or verification requirements.

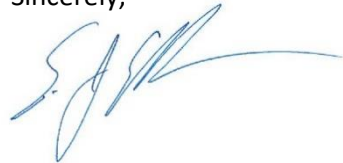
Conclusion

CDIA appreciates the opportunity to comment and provide the perspective of the consumer reporting industry on this ANPRM and how we can best support the financial services industry.

CDIA would be happy to make itself available for a meeting to discuss any of the above issues or any other issues that come up in the development of a proposed rule or the standing up of the new system.

Please contact us if you have any questions or we can provide any additional information.

Sincerely,



Eric J. Ellman
Senior Vice President, Public Policy & Legal Affairs