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BY ELECTRONIC TRANSMISSION ONLY TO:
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**Notice of Proposed Rulemaking (NPRM)—**
**Beneficial Ownership Information (BOI) Access and**
**Safeguards, and Use of FinCEN Identifiers for Entities**
**Docket reference—FINCEN-2021-0005 and RIN 1506-AB49/AB59**

Mr. Himamauli Das
Acting Director
Financial Crimes Enforcement Network (FinCEN)
P.O. Box 39
Vienna VA 22183

Dear Acting Director Das:

I am writing on behalf of the members of the American Escrow Association (AEA), the nation's trade association on federal matters for real estate settlement agents. Almost all members work for businesses which provide escrow and other forms of settlement (closing) services within the various states. They will collectively be referred to as "escrow" in this letter.

We are submitting our views on the access provisions of this notice with request for public comment. We appreciate the open process of information gathering and this opportunity to place our comments in the public record for the consideration of Main Treasury and FinCEN. As an additional note we do not represent reporting companies as that term is defined in the Corporate Transparency Act (CTA). And for that reason we do not have comments on the proposed amendments to the BOI reporting rules on how reporting companies would be able to use an entity's FinCEN identifier to fulfill their BOI reporting obligations (31 CFR 1010.380).

Our comments are on the following points made in the preamble and reflected in the Rule:

> "The CTA authorizes FinCEN to disclose a reporting company's BOI to an FI only to the extent that such disclosure facilitates the FI's compliance with CDD requirements under applicable law, and only if the reporting company first consents. FinCEN takes these constraints seriously given the sensitive nature of BOI and the potential number of FI employees who could have access to it. FinCEN is therefore not planning to permit FIs to run broad or open-ended queries in the beneficial ownership IT system or to receive multiple search results. Rather, FinCEN anticipates that a FI, with a reporting company's consent, would submit to the system identifying information specific to that reporting company, and receive in return an electronic transcript with that entity's BOI. To the extent the FI makes a trivial data-entry error in its request for BOI, the FI could still obtain the requested BOI, provided the errors do not compromise BOI security and confidentiality and result in the FI retrieving information on the wrong reporting company. This more limited information-retrieval process would reduce the overall risk of inappropriate use or unauthorized disclosures of BOI."

Escrow has been a statutory Bank Secrecy Act FI (Financial Institution) since the 1980's but excepted from certain requirements in the anti-money laundering Treasury regulatory scheme. As FinCEN covers in FIN-2017-A003, Risk in Real Estate Advisory, we are included as "persons involved in real estate closings and settlements." We encourage members to voluntarily report suspicious transactions and we advise them of the safe harbor from liability. FinCEN in that Advisory also covers the regulatory landscape including on formal requirements under the customer due diligence rules and other requirements and the current exceptions for persons involved in real estate closings such as ourselves:

> "More specifically, covered financial institutions—including depository institutions, loan or finance companies, and housing government-sponsored enterprises like Fannie Mae and Freddie Mac—generally have obligations to establish AML programs, report suspicious activity to FinCEN using Suspicious Activity Reports (SARs), and understand their customers and their source of wealth. In addition, beginning in May 2018, many financial institutions will be required to implement customer due diligence obligations and collect beneficial ownership information on their legal entity customers opening accounts. FinCEN provides substantial guidance and information on how to implement these requirements effectively. While FinCEN currently has exempted them from these broader obligations, persons involved in real estate closings and settlements do participate in efforts to safeguard the U.S. real estate industry and financial system from money laundering and terrorism financing through their existing AML/CFT requirements. They, like all U.S. persons engaged in trade and business, must file

> reports on transactions in currency and certain monetary instruments involving more than $10,000 (commonly referred to as "Form 8300")."

In fact, our members often voluntarily report on the Form 8300 a purchaser's use of multiple financial instruments, each under $10,000 and not automatically required to be reported, under the Treasury tax reporting regulations.

We support the purposes of the CTA on beneficial ownership reporting, and with controlled FI access to it and establishment of a secure database. In addition to many company practices implementing the safe handling and storage of information including nonpublic personal information established long ago, we are covered by the FTC's Safeguards Rule,16 CFR Part 314, and understand its requirements for an information security program. Notwithstanding its six-month delay to June of this year, we conducted a webinar in Fall 2022 on that Rule and encouraged members to adopt its requirements even before the original effective date and we believe all members implemented those requirements before 2023. Furthermore, we have made sure members have the information published by the IRS regarding taxpayer data—Publication 4557 Safeguarding Taxpayer Data. Our members collect and store such nonpublic identifying information as name and social security numbers (matched), as a routine matter, because they are needed to complete and file Forms 1099-S, Proceeds From Real Estate Transactions, which closing agents are responsible for reporting.

With that as background we do engage in sufficient-- for our purposes-- customer due diligence as described below with entity and individual person customers.

Currently escrow follows well-established practices and company-specific requirements in verifying that the legal entity (such as an LLC) involved in the transaction is in good standing in the particular state and that the person they are dealing with is an authorized representative of the entity including with actual authority to sign for the entity. That information may be made known to us as a list on a page or more, or as a single or small handful of individuals. Thus, we ask for organizing documentation including the operating agreement for evidence of authority to act. Beneficial ownership information is used to prepare FinCEN Geographic Targeting Orders.

In addition, almost always funds flow is only "from" (purchase side) and "to" (sale side) the entity, for example an LLC, not the beneficial owner(s). The information gathered has to be accurate at the moment and demonstrably complete and current to be effective for the transaction, which has an open of escrow through closing as its time frame and not an ongoing account relationship. Part of our due diligence now reflects a more recent trend to "entity hijacking" in which managing member information is

changed by bad actors through the ease of state corporation commission online filings. Finally, also we provide a one-sided (seller and buyer sides) settlement statement as a common practice with disclosures to the one side only so that the parties' private information is protected.

We would like to have access to the database and thus treated as qualifying statutory financial institutions under the BSA and the CTA implementing regulations even though certain formal requirements of the BSA/AML regime may continue to be excepted. If it becomes clear that access to the database will be made available while those exceptions continue, then this leads to the question of exactly how flexible will the database access be? From the escrow closing plus privacy perspective it is worth considering a matching system so that the information we collect that would also be in the database could be submitted as an inquiry using our information.

So, our comments are in the form of questions for which we request the final Rule provide answers:

We are submitting these as general responses to the questions posed in 1-30 under the first-designated section VI, Request for Comment.

1. Will FinCEN publish as an appendix to the final Rule a prescribed or suggested model form of a limited, specific-purpose authorization from the entity to use under this rule? We are referring to the consent piece of the Rule. We recommend this be done.

2. A. Our due diligence work often involves a broader approach to detecting financial fraud including as stated above. The final reporting rule from September 2022 covering the content of the database states that the information reported and to be stored in the secure database is limited as follows: the rule requires a reporting company to identify itself and report four pieces of information about each of its beneficial owners: name, birthdate, address, and a unique identifying number and issuing jurisdiction from an acceptable identification document (and the image of such document).

   B. It may be that a simple match—meaning yielding an automated response of (a) match; (b) no match; or (c) no information in the database-- could be a useful tool for escrow in some cases with respect to the data elements. A simple matching tool capability would seem to minimize any risk of privacy and/or data breach as the stored beneficial ownership four pieces of information would not be released.

It appears a transcript is the sole mechanism envisioned to respond to inquiries. We recommend consideration of the matching possibility.

Thank you for your consideration of our comments.

Our primary drafter and his contact number for questions is:

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Sincerely,

Tiffannie Hobgood
2022-2023 President
American Escrow Association