



July 2, 2025

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

Re: Response to the Department of the Treasury Financial Crimes Enforcement Network (FinCEN) Agency Information Collection Activities; Submission for OMB Review: Comment Request; Real Estate reports – Anti-Money Laundering Regulations for Residential Real Estate Transfers; OMB Control No. 156-0080 RIN 1506-AB54, Fed. Reg. 23991 (June 5, 2025)

Submitted electronically at: www.regulations.gov

Dear Ms. Gacki:

On behalf of the members of the California Escrow Association (CEA) and the Escrow Institute of California (EIC), we are again reiterating our strong opposition to the above-referenced Anti-Money Laundering Regulations for Residential Real Estate Transfers (hereinafter “Rule”) concerning anti-money laundering reporting for residential real estate transfers. Please refer to our Public Comments submitted April 16, 2024, as # 1v3-2buc-4qwl and January 13, 2025 as # m5v-tywl-lml2 (hereinafter “CEA/EIC Response Letters”).

While we are not lawyers and thus not experts in constitutional law, there is a substantial issue as to the constitutionality of the Rule under the Fourth Amendment to the U.S. Constitution. As of this date, there have been three lawsuits¹, that we know of, filed against FinCEN with respect to this Rule. Each lawsuit strongly questions the constitutionality of the collection of personal and private information under this Rule. We believe that this data collection is prohibited under the Fourth Amendment of the U.S. Constitution, the cornerstone of privacy rights. Nevertheless, the submission of the Real Estate Report (RER) to the Office of Management and Budget (OMB) must be addressed by our organizations. Here are our concerns:

Section II - “Paperwork Reduction Act of 1995”

“The RRE Rule requires reporting persons to submit RERs to FinCEN and keep records.” The goal of the Act is to minimize burdens on the public. It is also to ensure that the collection of information is useful and efficient. How does requiring the reporting person to manually enter up to a 111 required data points meet the requirements of the Paperwork Reduction Act of 1995?

¹ [Flowers Title Companies LLC dba East Texas Title Companies vs Bessent](#) -

[Fidelity National Financial vs Bessent](#)

[Jason Corley and Zachary Long vs Bessent](#)



In addition, FinCEN has not released sufficient data gained from the GTO orders to evidence the value of this expanded program. The Rule is burdensome and will cause additional costs to consumers and small businesses.

Privacy and technology

The settlement services industry, many of whom are women and minority owned small businesses, has significant technology and cyber security concerns. Settlement agents are already major targets for hackers due to the information that we are required to hold. The expansion of data collection will exacerbate this issue, by mandating the collection of additional private information that we are not otherwise required to collect and maintain. Various data points collection falls outside of the duties of settlement agents. Data breach concerns compel our request that FinCEN set up a Direct Client Portal (as referenced in CEA/EIC Response Letters). This would give FinCEN more flexibility to review and utilize the proposed 111 data points in real time. This would also satisfy concerns around state specific privacy laws.

Information gathering

The onus of gathering all the required information from consumers where English is not the primary language is yet another burden on the settlement agents. In the United States, where a multi-cultural environment flourishes, foreigners may provide required information in their native language. Correctly translating and/or interpreting the required data will create additional challenges for settlement agents. Will the reasonable reliance standard apply as a safety net for settlement agents in this regard?

Cost burden

FinCEN's internal sample testing regarding "Technology Cost" attempts to calculate the cost but only includes the estimated amount of time needed to input the information into the RER. As noted in the FNF lawsuit, no consideration was given to other costs and would result in additional "costs of \$472.00 to \$820.00 for every covered transaction" (#4 on page 4).

The Rule will result in significant increased costs charged to affected consumers, in an era when the government, at all levels, is expressing concerns about title and settlement costs.

Finally, additional cost to the consumers may be imposed when we recommend that consumers contact their legal counsel, as most settlement agents are not authorized to practice law. Review and completion of the information required is outside of the scope of settlement agent duties. This could also result in transaction delays and additional consumer costs.



In Closing

We believe the Rule and the use of a RER form to gather private information from individuals is **unconstitutional**. The actual gathering of information for the government and manual transmission to FinCEN should not be a function of settlement agents or any other reporting persons in the cascade. As previously suggested, we have provided proposed solutions to maintain the collection of the required information with FinCEN. A self-serve portal similar to the one used for the BOI reporting mandate keeps the data in one place, rather than scattered among thousands of businesses of varying sizes and resources. Consumers can be directed by settlement agents or other reporting persons to the government portal so that communication is immediate and direct between the government and the consumer. Once the consumer has provided the required information, the portal can provide a certificate of compliance, which is then given to the settlement agent or reporting person.


FinCEN does not address the concerns submitted by settlement agents time and again about the liability for the increased Non-Public Personally Identifiable (“NPPI”) information they will be forced to gather, report and keep safe for the period required in the Rule. What protections do these small businesses have if consumers sue because there is a breach of data mandated to be collected by the government?

Finally, it is apparent from the Rule and the present Notice to the OMB that the RER reporting is oversimplified, written from a perspective that has no basis in actual knowledge of what transpires in real estate or transfer of ownership transactions in the real world.

Thank you

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