Banking and Finance Law Daily Wrap Up, BANK SECRECY ACT—Texas title company files complaint over FinCEN reporting rule, (Apr. 15, 2025)

Banking and Finance Law Daily Wrap Up

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By Colleen M. Svelnis, J.D.

The complaint alleges that the final rule, which requires extra recordkeeping and reporting on certain non-financed real estate transactions, violates the Constitution and was promulgated in violation of separation of powers.

Flowers Title Company, a title agent incorporated in Texas and headquartered in Tyler, Texas, has filed a complaint questioning the legality of a final rule issued by the Financial Crimes Enforcement Network requiring title companies to collect and report information on details pertaining to non-financed transfers of residential property—including an individual's sensitive personal information.

According to the complaint, the final rule was promulgated in violation of separation of powers. The Rule violates the Constitution because FinCEN's claimed statutory authority amounts to a roving power to require disclosures on any consumer transaction the agency deems fit. It objects to being conscripted into performing government surveillance on its clients and being compelled to collect information beyond what is necessary to facilitate real estate closings in compliance with state and local law.

FinCEN rule. The final rule issued by the Financial Crimes Enforcement Network (FinCEN) requires certain persons involved in real estate closings and settlements to submit reports and keep records on certain non-financed transfers of residential real property to specified legal entities and trusts on a nationwide basis (see *Banking and Finance Law Daily*, Oct. 28, 2024).

The final rule is designed to combat and deter money laundering by increasing transparency in the U.S. residential real estate sector. The final rule took into consideration comments received regarding flexibility and clarity for real estate professionals required to report. FinCEN made several amendments from the proposed rule, including adopting a reasonable reliance standard, which allows reporting persons to rely on information obtained from other persons, absent knowledge of facts of that would reasonably call into question the reliability of that information. To minimize the burden on reporting persons to the extent practicable, the final rule also balances the collection of information that is highly useful to Treasury, law enforcement, and national security agencies against the burdens associated with collecting that information. Further, the rule contains a cascade system for determining who has primary filing responsibility, including a flexible option for industry professionals to designate compliance responsibilities.

FinCEN claims authority to mandate the collection and reporting of this information because the federal Bank Secrecy Act authorizes reporting rules for "any suspicious transaction relevant to a possible violation of law or regulation."

Complaint. The title company objects to real estate closings being subject to federal reporting requirements to collect information and report on many cumbersome details pertaining to non-financed transfers of residential property—including sensitive personal information that they must now gather from clients.

According to the complaint, there is "nothing inherently suspicious about a buyer using his or her own money" and objects to FinCEN deeming "commonplace real estate transactions inherently 'suspicious' because it is conceivable the government might glean information of relevance to possible statutory or regulatory violations if title companies are required to systematically report the details of all such transactions."

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The complaint requests a declaratory judgment, pursuant to 28 U.S.C. § 2201, holding the rule unconstitutional, and for the rule to be set aside. In addition, the title company requested an injunction prohibiting FinCEN from enforcing the rule.

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LitigationEnforcement: BankingFinance BankingOperations BankSecrecyAct CrimesOffenses TexasNews

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