



January 13, 2026

U.S. Department of the Treasury
The Honorable Scott Bessent, Secretary
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Andrea Gacki, Director
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183-0039
FRC@fincen.gov

Re: Concerns Regarding Imminent Application of New Final Rule on FinCEN Real Estate Reporting Regulations to Nonjudicial Foreclosure Transfers Nationwide; Request for Extension

Dear Secretary Bessent and Director Gacki:

The organizations and companies identified above write to advise you of significant concerns regarding the application of the new Final Rule (89 Fed. Reg. 70,258) to non-judicial foreclosure sales, mandating substantial new information collection and reporting and imposing significant new legal liability on small businesses nationwide. Given the final

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form for the report was only released in December, our coalition will undoubtedly continue to share feedback as companies think through the implications of these new regulations. Accordingly, the content of this letter should not be considered exhaustive as it does not reflect the totality of our concerns and observations. We remain committed to being collaborative, constructive and solutions-oriented with the goal of minimizing unintended consequences that adversely impact mortgage lending and undermine efficient enforcement of security interests. Generally, the regulations are drafted in the context of traditional real estate sales and closing but as applied to non-judicial foreclosures: 1) struggle from a broad scope and a lack of definitions that accurately advise newly-implicated parties of their substantial reporting obligations; 2) fail to acknowledge that non-judicial foreclosure trustees, county sheriffs and small regional law firms are **not** financial institutions or title insurance companies accustomed to the mandatory collection and reporting of detailed and comprehensive information about the members of the public who participate in involuntary non-judicial foreclosure auctions; 3) require substantial operational enhancements and burdens before and after a foreclosure sale, which must be addressed by impacted small businesses 4) open doors to onerous litigation against non-judicial trustees and small law firms by bidders and property owners

The above organizations and companies represent mortgage lenders, mortgage servicers, finance companies, small regional law firms and non-judicial foreclosure trustees who receive limited compensation to process ministerial notices of default and foreclosure under state non-judicial foreclosure statutes. It appears that the new Final Rule (89 Fed. Reg. 70,258) purports to cover these public non-judicial foreclosure sales to the highest cash bidder, at substantial burden and potential liability to the foreclosure trustee/auctioneer/county sheriff. In light of the ongoing litigation regarding the validity and scope of the Rule [*Fidelity National Financial, Inc., et al. v. Bessent, et al.*, United States District Court Case No. 3:25-cv-00554-WWB (M.D. FL)], foreclosure trustees and firms seek a further extension of the effective date beyond March 1, 2026 and/or an exemption of non-judicial foreclosure sales from this nationwide reporting obligation in the absence of reasonable grounds to conclude these transactions are used to violate or evade the BSA/AML laws. As of the date of this letter, dispositive motions remain pending in the case, and impacted stakeholders will need time to ensure they can act in accordance with any future rulings and orders.

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Unlike traditional real property closings in which there is a due diligence and escrow period for the reporting person to collect the required information before funds and deeds are exchanged, non-judicial foreclosure sales involve a public auction in which the purchaser is unknown until the day of sale and the funds in many states are due and payable on the day of sale. There are strict deadlines for foreclosure trustees and purchasers to record foreclosure deeds following the acceptance of a high bid, and trustees need more time to provide notice to bidders and implement pre-foreclosure procedures necessary to obtain from covered transferees the required information that must be reported following delivery/recording of the foreclosure transfer deed. Without more time to implement required notices and information collection practices and train staff to determine the validity and scope of the regulations, the ability of banks, licensed lenders and private individuals to timely enforce their security interests will be adversely impacted. Moreover, the finality of foreclosure sales (to bidders/transferees that fail or refuse to provide all of the required information) are placed in jeopardy, leaving the foreclosing lender and trustee in limbo (unable to deliver the deed because they are unable to ensure ability to timely report the required information to avoid substantial penalties). Many states only allow for the cancellation of a completed foreclosure sale for limited reasons, and a bidder's failure to provide required information under the Final Rule may not constitute adequate grounds in many jurisdictions. Further, demanding the information from each public bidder as a prerequisite in advance of each nonjudicial foreclosure auction may be considered bid chilling, and the refusal of a trustee to issue a foreclosure deed after acceptance of the bid but before receiving the required reporting information will likely result in litigation and delays in the ability to finalize foreclosure sales in non-judicial states.

As an example, the California Civil Code requires the trustee's deed to be issued within 21 days or 60 days of the live foreclosure auction, depending on whether the post-auction overbid process is triggered for 1-4-unit residential properties. As a result, foreclosure sales that are already noticed to take place on or after January 12, 2026 (that are subject to the longer post-auction overbid process) or sales that are noticed to take place on or after February 11, 2026 (that are not subject to the longer process) will need to notify public bidders and collect the required information on or about the date of those scheduled foreclosure sales where the foreclosure deed cannot be delivered until on or after March 1, 2026. FinCEN's final form for the report and the reference guide materials were only recently released at the end of December. There is simply not enough time to educate public bidders, implement data collection policies and procedures, and complete

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necessary training so that trustees will be able to comply with respect to foreclosure sales that are already noticed on or after January 12, 2026. Doing so while there is ongoing litigation concerning the validity and scope of the regulation seems impractical. Moreover, in many states there is a very short timeframe between the conduct of the foreclosure auction and the statutory deadline to record the foreclosure deed for the protection of the transferee (e.g., Utah – 5 business days; Arizona – 7 business days; Washington – 15 calendar days) The reporting process is detail-oriented and unforgiving, requiring all specific data fields to be completed by the deadline, with no grace period or option for substantial compliance. **Thus, foreclosure trustees, small law firms and county sheriffs need more time before the March 1, 2026 effective date to ensure that compliant data collection and reporting processes are in place so that they can timely issue the foreclosure deed without fear of liability for inability to timely or completely report the required data points to FinCEN.**

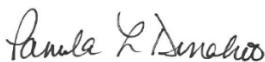
Optimally, an extension of the effective date of the regulation to at least December 1, 2026 would allow state legislatures to enact reasonable statutes to assist nonjudicial foreclosure trustees in addressing issues that arise from the refusal of a bidder/transferee to provide the required reporting information and provide sufficient notice for participants in the market to be aware of the impact on foreclosure sale bidding. Since the non-judicial foreclosure process is governed at the state-level and it will be significantly impacted by these federal regulations, the states should be afforded proper time to review and revise their statutory processes accordingly. Please contact us to discuss these important concerns.



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