



Flowers Title Companies, LLC v. Bessent: FinCEN Reporting Rule Vacatur and Appeal Status

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The Financial Crimes Enforcement Network (“FinCEN”) adopted a 2024 Final Rule with an original effective date of December 1, 2025 (extended to March 1, 2026) mandating expansive new reporting regarding “non-financed transfers” of residential real property (“Rule”). The Rule was intended to combat money laundering and other illicit financial activity purportedly facilitated by such transfers. Unfortunately, the Rule’s broad definition of non-financed transfers covered transfers to entities and trusts resulting from public non-judicial foreclosure auctions, implicating foreclosure

trustees as required reporting parties. The United Trustees Association analyzed and monitored the impacts of the Rule and communicated with FinCEN regarding needed clarifications about the substantial impact of the Rule on non-judicial foreclosures and deeds in lieu of foreclosure nationwide. During negotiations with FinCEN for potential exemption of non-judicial foreclosures from the Rule, on March 19, 2026, the federal

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district court for the Eastern District of Texas in *Flowers Title Companies, LLC v Bessent* Case No. 6:25-cv-127-JDK (E.D. Tex. Mar. 19, 2026) 826 F.Supp.3d 813 fortuitously ruled to “vacate and set aside” the sweeping new reporting requirements in the Rule.

In the lawsuit, Flowers Title Companies asserted that FinCEN exceeded statutory authority and violated the Administrative Procedures Act in promulgating the Rule. The Court found that although 31 U.S.C. section 5318(g)(1) empowers the Secretary of the Treasury to “require any **financial institution**, and any director, officer, employee, or agent of any financial institution, to report any **suspicious transaction** relevant to a possible violation of law or regulation,” this section “does not give FinCEN the authority to regulate all transactions—but only those **transactions that tend to arouse the belief that something is wrong.**” [Emphasis added.] The court also found that while Section 5318(a)(2) allows FinCEN to “require institutions to maintain procedures, including maintaining collection and reporting procedures,” this section does not authorize the affirmative information collection and reporting requirements in the Rule regarding **non-financed transactions**. By granting vacatur of the Rule, the Court acted to “re-establish the status quo absent the unlawful

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agency action.” Based on the decision, the Rule is not enforceable by FinCEN at this time.

It should be noted that although another recent case, *Fidelity Nat’l Fin., Inc. v. Bessent*, No. 3:25-CV-554-WWB-SJH, 2025 WL 4477503 (Dec. 9, 2025) (M.D. Fla. Feb. 19, 2026) that similarly challenged the Rule reached a different result, the Texas case vacated the Rule nationwide so would control pending any reversal by the Fifth Circuit or the U.S. Supreme Court. In *Fidelity*, the Magistrate Judge recommended denying the plaintiff’s motion for summary judgment and granting FinCEN’s cross-motion for summary judgment, finding that FinCEN acted within its statutory authority and rejecting the constitutional challenges to the Rule. The district judge later adopted the recommendation [2026 WL 472350 (Feb. 19, 2026)].¹ Although the Texas court’s opinion recognized that the court in *Fidelity* had upheld the Rule, it rejected those arguments so, for now at least, *Flowers* controls.

Shortly after the *Flowers* decision, FinCEN posted the following message on its website: “In light of a federal court decision, reporting persons are not currently required to file real estate reports with FinCEN and are not subject to liability if they fail to do so while the order remains in force.” Thereafter, FinCEN updated the Real Estate Reporting Rule Frequently Asked Questions (“FAQ”) on its webpage on May 18, 2026 with more specific information regarding the impact of the *Flowers* decision. Of particular interest, the updated FAQ content confirmed the following: “If the court’s order is overturned and the RRE Rule again becomes legally effective, reporting persons will not be required to file reports for covered transactions that would have been required to be reported while the court’s order was in force. If the order is overturned, FinCEN will provide further guidance on when reporting will be required.” A copy of the updated FAQ content can be found [here](#). Based on the above, there will likely be a grace period following the issuance of a ruling on appeal before data collection and reporting would resume, if applicable.

As expected, a Notice of Appeal was filed by the government as to the *Flowers* case on May 11, 2026. On August 17, 2026, the Department of the Treasury and FinCEN filed their opening Brief for Appellants. The responsive brief of Appellee Flowers Title Companies, L.L.C. is due to be filed on or before October 16, 2026. Several parties intend to file *amicus* briefs, providing support and additional perspectives regarding the issues facing the impacted industries, and UTA is engaged in these efforts to determine how it can contribute. Once the briefing is complete, the Court of Appeal will likely schedule oral argument, potentially in the first quarter of 2027. UTA is continuing to monitor the status of the appeals of the *Flowers* and *Fidelity* cases, and we will keep members informed of the progress.

If you have questions about how these decisions and the Rule may impact your loan servicing, foreclosure and REO management operations, please reach out to Michelle Mierzwa at mmierzwa@wrightlegal.net. To make a donation to the United Trustees Association’s Amicus Brief Fund, please reach out to Richard Meyers at rmeyers@unitedtrustees.com.



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¹Fidelity filed a Notice of Appeal of the Florida District Court judgment on April 17, 2026, which is proceeding under 11th Circuit Court of Appeals Case No. 26-11307. The U.S. Chamber of Commerce, the NFIB Legal Center and the National Association of Home Builders filed an *amicus* brief in support of Fidelity’s appeal on August 7, 2026, asserting that the Rule exceeds FinCEN’s statutory authority and is arbitrary and capricious, lacking meaningful analysis of the costs and benefits of the Rule.