

# Clients & Friends Memo

## FinCEN Tightens the Screws on Money Launderers with Additional Scrutiny of High-Value Residential Real Estate Transactions

August 1, 2016

Choice real estate markets such as New York, Miami, Los Angeles, San Francisco, San Diego, and San Antonio may offer enticing amenities like buzzing nightlife or sunny beaches, but thanks to the Financial Crimes Enforcement Network (“FinCEN”), they now also come with an extra dose of law enforcement scrutiny. On July 27, 2016, FinCEN expanded the locales in which Geographic Targeting Orders (“GTO”)<sup>1</sup> will temporarily require U.S. title insurance companies to identify the natural persons (the “beneficial owners”) behind legal entities used to make “all cash” purchases of high-end residential real estate in those six metropolitan areas.<sup>2</sup> The GTOs, which will be in effect from August 28, 2016, through February 23, 2017,<sup>3</sup> are an expansion of two similar GTOs for Manhattan and Miami-Dade County that were set to expire at the end of August.<sup>4</sup>

As it has done with the original Manhattan and Miami-Dade GTOs, law enforcement intends to use the data collected from title insurance companies to identify individuals (along with the agents, lawyers and bankers who assist them) who attempt to hide the proceeds of criminal activity through the anonymous purchase of high-end residential real estate.

### I. New Data and New Insights into Money Laundering Risks

Emphasizing the value of the identifying information collected from the original Manhattan and Miami-Dade GTOs, FinCEN has sought to broaden the scope of its data collection. According to FinCEN, the original Manhattan and Miami-Dade GTOs have already proven their worth. Apparently, a “significant portion” of the real estate purchases that were covered in the original

---

<sup>1</sup> The Bank Secrecy Act (“BSA”) authorizes FinCEN to issue GTOs upon a finding by the Secretary of the Treasury that additional requirements are necessary to prevent evasion of the BSA’s recordkeeping and reporting provisions. See 31 U.S.C. § 5326; 31 C.F.R. § 1010.370; Treasury Order 180-01.

<sup>2</sup> Press Release, U.S. Dept. of the Treas., Fin. Crimes Enforcement Network, FinCEN Expands Reach of Real Estate “Geographic Targeting Orders” Beyond Manhattan and Miami (July 27, 2016), [https://www.fincen.gov/news\\_room/nr/html/20160727.html](https://www.fincen.gov/news_room/nr/html/20160727.html) (hereinafter “Expanded GTO Press Release”).

<sup>3</sup> *Id.*

<sup>4</sup> See Press Release, U.S. Dept. of the Treas., Fin. Crimes Enforcement Network, FinCEN Takes Aim at Real Estate Secrecy in Manhattan and Miami (Jan. 13, 2016), [https://www.fincen.gov/news\\_room/nr/html/20160113.html](https://www.fincen.gov/news_room/nr/html/20160113.html).

GTOs produced data that indicated that there was possible criminal activity associated with the beneficial owners behind the legal entity purchasers.<sup>5</sup> A FinCEN spokesman stated that the data collected from the original GTOs enabled FinCEN to identify: (1) a beneficial owner who engaged in \$16 million in suspicious cash withdrawal activity; (2) a beneficial owner who was possibly involved in a counterfeit check scheme; and (3) a beneficial owner who was connected to a network of shell companies that received about \$7 million in suspicious wire transfers from businesses in South America.<sup>6</sup>

Under the new GTO requirements, title insurance companies must provide FinCEN with information identifying the beneficial owner of a limited liability company or other legal entity that uses cash to purchase residential real estate in excess of certain monetary thresholds in each of the six covered areas.<sup>7</sup> The six covered areas are (1) all boroughs of New York City; (2) the counties of Miami-Dade, Broward, and Palm Beach; (3) Los Angeles County; (4) the counties of San Francisco, San Mateo, and Santa Clara; (5) San Diego County; and (6) the county that includes San Antonio, Texas (Bexar County).<sup>8</sup> The monetary thresholds for each metropolitan area vary from \$3,000,000 for Manhattan to \$500,000 for Bexar County, Texas.<sup>9</sup>

FinCEN was quick to note that release of the new GTOs is not a real estate industry “crackdown.” Rather, the new GTOs are meant to help regulators further analyze and understand the anti-money laundering (“AML”) risks present in all-cash residential real estate transactions. FinCEN acknowledged that while AML regulations allow for review of approximately 78% of residential real estate purchases, regulators still struggle to detect and address AML risks in the remaining 22% of residential real estate transactions which are completed with cash.<sup>10</sup> The GTOs are meant to remedy the lack of insight into all-cash transactions by legal entities (which regulators believe are highly vulnerable to money laundering) by supplying regulators with a new source of data.

---

<sup>5</sup> Expanded GTO Press Release.

<sup>6</sup> New York Public Radio, *Feds Expand Money Laundering Probe to All Five Boroughs – and Beyond*, July 27, 2016, available at <http://www.wnyc.org/story/feds-expand-money-laundering-probe-manhattan-all-five-boroughs-and-beyond/>.

<sup>7</sup> See, e.g., U.S. Dept. of the Treas., Fin. Crimes Enforcement Network, *Sample Geographic Targeting Order*, available at [https://www.fincen.gov/news\\_room/nr/files/Title\\_Ins\\_GTO\\_Sample\\_072716.pdf](https://www.fincen.gov/news_room/nr/files/Title_Ins_GTO_Sample_072716.pdf).

<sup>8</sup> Expanded GTO Press Release.

<sup>9</sup> For a complete list of monetary thresholds, see U.S. Dept. of the Treas., Fin. Crimes Enforcement Network, *Geographic Targeting Order Covering Title Insurance Companies, Major Metropolitan Areas and Monetary Thresholds*, available at [https://www.fincen.gov/news\\_room/nr/files/Title\\_Ins\\_GTO\\_Table\\_072716.pdf](https://www.fincen.gov/news_room/nr/files/Title_Ins_GTO_Table_072716.pdf).

<sup>10</sup> Jennifer Shasky Calvery, Director, Financial Crimes Enforcement Network, *Address at the ACAMS AML and Financial Crimes Conference* (April 12, 2016), available at [https://www.fincen.gov/news\\_room/nr/pdf/20160412.pdf](https://www.fincen.gov/news_room/nr/pdf/20160412.pdf) (hereafter “Shasky Calvery Speech”).

## II. Increased Pressure to Identify Beneficial Owners of Legal Entities

The expanded GTOs are also a part of a comprehensive U.S. government effort to increase transparency around beneficial owners of legal entities in myriad industries. Although the use of limited liability companies and trusts to execute financial transactions is not inherently nefarious, there is increasing evidence that bad actors use such entities to obscure their identities and thereby evade taxes, launder money, or finance terrorist activity. Despite its comprehensive framework of AML laws and regulations, the U.S. has long been criticized for failure to collect adequate identifying information about the individuals who form legal entities and use them to conduct financial transactions.<sup>11</sup>

Although relatively small in scope, the new GTOs further enhance transparency in some of the most risk-prone real estate transactions. The expanded GTOs also come on the heels of comprehensive efforts to enhance transparency of ownership of entities involved in high-risk financial transactions. Specifically, in May, FinCEN released the final version of its Customer Due Diligence Rules, which require covered financial institutions to identify the beneficial owners of most legal entity customers.<sup>12</sup> At the same time, the Department of the Treasury (“Treasury”) proposed draft legislation that would amend the Bank Secrecy Act to require reporting and record keeping regarding beneficial ownership of legal entities.<sup>13</sup> Financial institutions have two years to implement the Customer Due Diligence Rules, and, in the current political climate, it is unlikely that Congress will act on Treasury’s proposed regulations. This means that small but targeted actions, like FinCEN’s GTOs, are the mechanism through which regulators will likely continue to act to gain needed information in real time. And, there is no sign that such actions are abating. Rather, as long as FinCEN or other regulators continue to see any incremental benefit or can make even marginal use of the information collected, we can anticipate data collection efforts to continue for the foreseeable future.

## III. Conclusion

FinCEN’s expansion of the title insurance GTOs is a strong indicator that scrutiny of both all-cash real estate transactions and beneficial ownership is not going to abate. The information yielded from the original Manhattan and Miami-Dade GTOs has reportedly proven valuable in identifying AML risks and possible illicit activity, and regulators would likely not allow a source of such

---

<sup>11</sup> As Transparency International has noted, many states collect less information from individuals who form legal entities than they collect from individuals who are applying for a driver’s license. See Transparency International-USA, *Beneficial Ownership Transparency*, <http://www.transparency-usa.org/what-we-do/fighting-corruption/beneficial-ownership-transparency/>.

<sup>12</sup> See 31 C.F.R. §§ 1010, 1020, 1023, *et al.*, Customer Due Diligence Requirements for Financial Institutions – Final Rule (May 11, 2016), available at <https://www.fincen.gov/redirect.html?url=https://www.gpo.gov/fdsys/pkg/FR-2016-05-11/pdf/2016-10567.pdf>.

<sup>13</sup> Letter from Jacob Lew, Secretary, U.S. Dept. of the Treas. to Paul Ryan, Speaker, U.S. House of Representatives (May 5, 2016), <https://www.treasury.gov/press-center/press-releases/Documents/Lew%20to%20Ryan%20on%20CDD.PDF>.

information to run dry. During a speech in April of this year, former FinCEN Director Jennifer Shasky Calvery described the original Manhattan and Miami GTOs as a part of FinCEN's "incremental approach" to AML rulemaking.<sup>14</sup> The expansion of those GTOs to a total of six metropolitan areas for another 180-day period is a logical next step in that incremental approach and a signal that the temporary GTOs will likely give way to permanent beneficial ownership regulations for title insurers, and portends greater AML compliance obligations for banks and other participants in real estate finance. Title insurance companies and others involved in closing all-cash residential real estate purchases need to prepare - soon if not immediately - for enhanced regulatory requirements nationwide.

\* \* \* \*

If you have any questions regarding the foregoing, please contact the authors below.

Jodi Avergun	+1 202 862 2456	<a href="mailto:jodi.avergun@cwt.com">jodi.avergun@cwt.com</a>
Steven Herman	+1 212 504 6054	<a href="mailto:steven.herman@cwt.com">steven.herman@cwt.com</a>
Colleen Kukowski	+1 202 862 2286	<a href="mailto:colleen.kukowski@cwt.com">colleen.kukowski@cwt.com</a>
Nicholas Brandfon	+1 212 504 6039	<a href="mailto:nicholas.brandfon@cwt.com">nicholas.brandfon@cwt.com</a>

---

<sup>14</sup> Shasky Calvery Speech.