

FinCEN Targeting Orders – August 29, 2017

On August 22, 2017 the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") issued a Geographic Targeting Order ("GTO") directed toward the purchase of residential real estate in specified geographic areas. A GTO is an order issued by FinCEN under the Bank Secrecy Act that imposes additional recordkeeping or reporting requirements in a specific geographic area.

In an accompanying *Advisory to Financial Institutions and Real Estate Firms and Professionals*, FinCEN noted that "[d]rug traffickers, corrupt officials, money launderers, and other criminals seek to exploit real estate transactions to hide their illicit profits, conceal their identities, and launder funds." FinCEN renewed (through March 20, 2018) and expanded certain geographic targeting orders ("GTOs") that it had issued in January and July 2016, and had renewed in February 2017 (the "Existing GTOs").

The Existing GTOs resulted from money-laundering concerns with regard to certain all-cash purchases of "high-end" residential real properties located in specified counties located in California, New York, Florida, and Texas. FinCEN's concern is that, by using shell entities in real estate transactions that do not involve external financing, money launderers can purchase real estate to launder cash without being detected. To address that concern, the Existing GTOs require U.S. title insurance companies to identify and report on FinCEN Form 8300 the ultimate beneficial owners (i.e., one or more natural persons) of legal entities making such purchases.

Counties and Purchases

The Existing GTOs target high-end residential real estate purchases in the following counties:

<u>State</u>	<u>County</u>	<u>Purchase Exceeding</u>
California	Los Angeles, San Diego, San Mateo, San Francisco and Santa Clara	\$2,000,000
Florida	Miami-Dade, Broward and Palm Beach	\$1,000,000
New York	New York (Manhattan) Brooklyn, Queens, Bronx and Staten Island	\$3,000,000 \$1,500,000

Texas

Bexar (San Antonio)

\$500,000

August 22, 2017 GTO

In addition to extending the Existing GTOs, the August 22, 2017 GTO:

- Added the City and County of Honolulu, Hawaii, to the list of geographic areas targeted by the GTO, for those residential real estate purchases in excess of \$3 million, apparently focusing in part of Chinese and Russian purchases there;
- Expanded the scope of the GTOs to **include purchases using wire transfers**, not only purchases using currency or check.
- Simultaneously released a series of Frequently Asked Questions and Answers.

Perspective

FinCEN extended the GTOs to include purchases made by wire transfers since it believed that its initial failure to do so resulted in a major gap. For the 12 months since July 2016, only 247 purchases were reported. Undoubtedly, the number of purchases to be reported in the future will materially increase.

The August 22, 2017 GTO also suggests that FinCEN may continue to expand reporting obligations. Such expansion could occur in at least two significant respects:

- Future reporting obligations may apply to all significant purchases of residential real estate anywhere in the U.S., with monetary thresholds based on market conditions; and
- Future reporting obligations may apply to commercial real estate, again with monetary thresholds based on market conditions.

Effective Date

The renewed and new GTO provisions are effective September 22, 2017 for a 180-day period, i.e., through March 20, 2018.

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