

Fact Sheet for Financial Crimes Enforcement Network Geographic Targeting Orders for Manhattan, N.Y., and Miami-Dade County, Fla.

AMERICAN
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ASSOCIATION



On January 13, 2016, the Financial Crimes Enforcement Network (FinCEN), one of the U.S. Department of Treasury's lead agencies in the fight against money laundering, issued two Geographic Targeting Orders, imposing temporary new data collection and reporting requirements on certain title companies. Pursuant to the Orders, which are effective March 1, 2016 through August 27, 2016, these title companies will be required to identify natural persons with 25% or greater ownership interest in a legal entity making an all cash real estate purchase in excess of \$3 million dollars in the Borough of Manhattan in New York, N.Y., and an all cash real estate purchase in excess of \$1 million in Miami-Dade County, Fla.

- [Manhattan, N.Y., order](#)
- [Miami-Dade County, Fla., order](#)
- Read [FinCEN's press release](#)
- Read [ALTA's Background article](#)

I. The Basics

What is FinCEN?

Established in 1990, FinCEN is a bureau of the U.S. Department of the Treasury. Its mission is “to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.” FinCEN fulfills its mission by receiving and maintaining financial transactions data, analyzing and disseminating that data for law enforcement purposes, and building global cooperation with counterpart organizations in other countries and with international bodies. FinCEN's authority comes from the Currency and Financial Transactions Reporting Act of 1970, as amended by Title III of the USA PATRIOT Act of 2001 and other legislation. This legislative framework is commonly referred to as the Bank Secrecy Act (BSA).



What is the Bank Secrecy Act?

The Bank Secrecy Act (BSA) is the primary U.S. anti-money laundering (AML) law and tool for detecting, deterring and disrupting terrorist financing networks. The BSA authorizes the Secretary of the Treasury to issue regulations requiring banks and other financial institutions to take a number of precautions against financial crime, including the establishment of anti-money laundering programs and the filing of reports that have been determined to have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings, and certain intelligence and counter-terrorism matters. See [31 U.S.C. 310](#).

What is money laundering?

Money laundering is the process of disguising financial assets produced through illegal activity. Through money laundering, the monetary proceeds derived from criminal activity are transformed into funds with an apparently legal source.

II. Geographic Targeting Orders

What is a Geographic Targeting Order (GTO)?

Under the BSA, the director of FinCEN can issue orders imposing additional recordkeeping and reporting requirements on domestic financial institutions or non-financial trades or businesses in a specific geographic area for transactions involving certain amounts of United States currency or monetary instruments. These orders can be in effect for up to 180 days. See 31 U.S.C. § 5326(a); 31 C.F.R. § 1010.370.

How is a GTO different from cash transaction reporting?

Under the internal revenue code, a business does not need to report a cash transaction or multiple related transactions unless more than \$10,000 in currency is received. Under a GTO, FinCEN can lower this threshold for certain Covered Business and certain Covered Transactions. Both cash transaction reporting and GTO reporting are made to the government using versions of the [*IRS form 8300*](#).

Can a GTO be renewed after the initial 180 day period?

Yes. GTOs can be renewed by the director of FinCEN following a finding that the circumstances justifying the original GTO continue to exist.

III. Details of the GTOs

What are the effective dates of the GTO?

The GTO goes into effect on March 1, 2016 and ends on August 27, 2016.

Who is subject to the GTOs?

Only the specific title insurance companies that received the Geographic Targeting Order, including any subsidiaries or agents of the title insurance company (“Covered Business”), are subject to the requirements of the GTO.

What types of transactions must the Covered Business report?

A Covered Business must report any transaction that involves each of the following elements:

1. The buyer must be a **Legal Entity**, defined under the GTO as a corporation, limited liability company, partnership or other similar business entity, whether formed under the laws of a state or of the United States or a foreign jurisdiction;
2. **Residential** real property located in the Borough of **Manhattan**, N.Y., or **Miami Dade County**, Fla.;
3. For a **purchase price** of more than \$3 million (Manhattan) or \$1 million (Miami);
4. **Without a loan** or similar form of external financing from a financial institution; and
5. Any portion of the purchase price is paid using currency, cashier’s check, certified check, traveler’s check or money order.

How long does a Covered Business have to report a Covered Transaction to FinCEN?

A Covered Business must report a Covered Transaction to FinCEN within thirty (30) days of the closing of the Covered Transaction.

How Long is a Covered Business required to retain Covered Transaction records?

All records related to compliance with the GTO must be retained for a period of five (5) years from the last day the GTO is effective. Under the terms of the existing GTO, a Covered Business would be required to retain such records until August 27, 2021. However, should the GTO be renewed, all records related to compliance with the GTO must be retained for five (5) years from the last day the GTO is effective pursuant to all renewals of the GTO.

Will the GTO stop real estate transactions from closing?

The GTO is not intended to prevent real estate closings from taking place. The GTO is meant to allow the Treasury to collect information about these transactions.

IV. Reporting Requirements

What information must a Covered Business report about a Covered Transaction?

A Covered Business must report a Covered Transaction to FinCEN using [Form 8300](#), and include the following information:

- *Identity of the individual primarily responsible for representing the Legal Entity;*
- *A description of the identification (driver's license, passport or other similar identifying document) obtained from the individual primarily responsible for representing the Purchaser with a copy retained in the file;*
- *identity of the Purchaser and any Beneficial Owner(s) of the Purchaser's;*
- *A description of the type of identification, driver's license, passport or other similar identifying document, obtained from the Beneficial Owner with a copy retained in the file;*
- *Date of closing of the Covered Transaction;*
- *Total amount transferred in the form of a Monetary Instrument;*
- *Total purchase price of the Covered Transaction; and*
- *Address of the real property involved in the Covered Transaction;*
- *Also include the term "REGTOMLA" or "REGTONYC" as a unique identifier for this GTO in the Comments section.*

Does the GTO define who is a Beneficial Owner?

A Beneficial Owner is an individual who directly or indirectly owns 25% or more of the equity interest in the Legal Entity.

What if the Legal Entity purchasing the real property is owned by another Legal Entity?

If the purchasing Legal Entity is owned by another Legal Entity, the GTO requires the reporting of information about the Beneficial Owners of any and all of the related Legal Entities.

What are the penalties for violating the GTO?

Violation of the GTO may subject a Covered Business to the following criminal and civil penalties:

Criminal Penalties

Type of Violation	Penalty
Willful violation	<i>Up to \$250,000 fine and 5 years in prison</i>
Willful violation while violating another law of the United States	<i>Up to \$500,000 fine and 10 years in prison</i>
Structuring or assisting in structuring a transaction to avoid the currency transaction reporting	<i>Fine and up to five years in prison</i>

Civil Penalties

Type of Violation	Penalty
Willful violation <i>(a separate violation occurs for each day the violation continues and each location a violation occurs)</i>	<i>Greater of the amount involved (up to \$100,000) or \$25,000</i>
Failure to file a report, material misstatement or omission	<i>Not to exceed the amount involved in the transaction</i>
Structuring or assisting in structuring a transaction to avoid the currency transaction reporting	<i>Not to exceed the amount involved in the transaction</i>
Negligence	<i>Not to exceed \$500 or \$50,000 if a pattern of negligence is found</i>

Can penalties be assessed against a Covered Business' individual employees or agents?

Yes. Both civil and criminal penalties may be levied against a partner, director, officer, agent or employee of the Covered Business.

How long after a violation can the government assess a penalty?

Penalties can be assessed any time within six years from the date of the Covered Transaction. Civil actions may be commenced within two years of the date of the penalty or criminal conviction.

V. Covered Transactions

Does private or seller financing qualify as "without a bank loan" under the GTO reporting requirements?

Yes, the reporting exclusion is only triggered by loans financed by a financial institution that is required to have an anti-money laundering policy. If financing is provided by a private lender, seller or other business that does not have a federal requirement to maintain an anti-money laundering policy, then the transaction is reportable.

Are the reporting requirements triggered when the purchase price is paid entirely through a wire transfer or personal or business check?

No. If a purchase of real property is made entirely by a wire transfer or personal or business check, this would not fall within the definition of a Covered Transaction and the reporting requirements of the GTO would not apply.

What if only a de minimis amount of currency is used in the purchase payment?

If any amount of the purchase, including a de minimis amount, is funded by using currency or any one of the types of payment listed in the order, then it would be considered a Covered Transaction subject to the reporting requirements of the GTO.

What if the purchase price is paid for using a wire transfer, but a settlement service is paid using currency?

The GTO's reporting requirements are only triggered when the purchase of the real property is funded by one of the forms of payment covered in the GTO, which includes currency but not wire transfers or personal or business checks. The GTO does not cover how the payment of a settlement service is funded.

VI. Who Must File a Form 8300?

Is a title insurance agent, settlement attorney or real estate agent required to report Covered Transactions to FinCEN?

No. The GTO only applies to the title insurance companies, and its subsidiaries and agents that received the order from FinCEN. It does not apply to business involved in the Covered Transactions that are not agents of the Covered Business, such as attorneys or real estate agents. While the definition of a Covered Business includes the insurer's agents, only one report is required for each Covered Transaction. Depending on the policy and procedures of the covered insurer, the report can be filed by either the insurer or their agent.

If the Covered Business just insured the transaction but was not involved in the closing, does it need to report the transaction?

Yes. A Covered Business must report the transaction whenever it, or its subsidiaries or agents, are involved in the Covered Transaction. This includes when they only provide title insurance and not settlement services in the transactions.

VII. Collecting Information.

Can a Covered Business rely on information provided by real estate attorneys or agents when reporting?

Yes. For purposes of completing the FinCEN Form 8300, in addition to collecting information directly from the Purchaser or the Beneficial Owner(s), a Covered Business may collect information regarding the Purchaser or Beneficial Owner(s), when made available by from the real estate agent or attorney involved in the Covered Transaction.

Can an attorney withhold client information from the title insurance company under a claim of privilege?

Information necessary for completing a form 8300, Suspicious Activity Report or other Bank Secrecy Act reporting requirement cannot be withheld from the government due to attorney-client privilege. See *United States v. Goldberger & Dublin, P.C.*, 935 F.2d 501 (2nd Cir. 1991), holding that absent special circumstances, attorneys were required to disclose client information on Forms 8300. See also *United States v. Leventhal*, 961 F.2d 936 (11th Cir. 1992), holding that state bar ethical rules do not constitute a "special circumstance" that would protect clients' names and fee arrangements from disclosure.