



FREQUENTLY ASKED QUESTIONS

Issued: November 5, 2020

Subject: Geographic Targeting Orders Involving Certain Real Estate Transactions

On **November 5, 2020** FinCEN issued Geographic Targeting Orders (GTOs) requiring Covered Businesses to collect and report information about certain residential real estate transactions in the following jurisdictions: (1) the Texas counties of Bexar (San Antonio), Tarrant (Fort Worth), or Dallas; (2) the Florida counties of Miami-Dade, Broward, or Palm Beach; (3) the Boroughs of Brooklyn, Queens, Bronx, Staten Island, or Manhattan in New York City, New York; (4) the California counties of San Diego, Los Angeles, San Francisco, San Mateo, or Santa Clara; (5) the City and County of Honolulu in Hawaii; (6) the Nevada county of Clark (Las Vegas); (7) the Washington county of King (Seattle); (8) the Massachusetts counties of Suffolk, or Middlesex (Boston); or (9) the Illinois county of Cook (Chicago).

As a general matter, FinCEN expects a Covered Business to implement procedures reasonably designed to ensure compliance with the terms of the GTOs, including reasonable due diligence to determine whether it (or its subsidiaries or agents) is involved in a Covered Transaction and to collect and report the required information. In complying with the terms of the GTOs, a Covered Business may reasonably rely on information provided to it by third parties, including other parties involved in Covered Transactions.

To assist Covered Businesses in complying with the GTOs, FinCEN is publishing this list of frequently asked questions (FAQs) in response to inquiries FinCEN has received. These FAQs are applicable only to the GTOs and should not be construed to apply to any other FinCEN regulation or order. Terms used but not otherwise defined herein shall have the meaning set forth in the GTOs. For additional questions, please contact the FinCEN Resource Center at FRC@FinCEN.gov.

1) What does the term “residential real property” mean?

For purposes of the GTOs, “residential real property” means real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families.

2) To what extent must a Covered Business verify information about the Beneficial Owner of a Purchaser?

The GTOs require a Covered Business to collect and report certain identifying information about the Beneficial Owner(s) of the Purchaser in a Covered Transaction. For purposes of the GTOs, a “Beneficial Owner” means each individual who, directly or indirectly, owns 25% or more of the equity interests of the Purchaser. The GTOs provide that the Covered Business must obtain and record a copy of the Beneficial Owner’s driver’s license, passport, or other similar identifying

documentation. The Covered Business may reasonably rely on the information provided to it by third parties involved in the Covered Transaction, including the Purchaser or its representatives, in determining whether the individual identified as a Beneficial Owner is in fact a Beneficial Owner.

3) Who is considered a Covered Business’s “agents” for purposes of the GTOs?

A Covered Business’s “agents” refers to people or entities that are authorized by the Covered Business, usually through a contractual relationship, to act on its behalf to provide title insurance underwritten by the Covered Business (or its subsidiaries). FinCEN notes that the recordkeeping and reporting requirements under the GTOs are triggered only when a Covered Business (or its subsidiaries or agents) is involved in a Covered Transaction by providing title insurance underwritten by that Covered Business (or its subsidiaries) in connection with the Covered Transaction.

FinCEN also recognizes that a person or entity may be an independent agent of a Covered Business, and thus may act on behalf of multiple title insurance companies. A Covered Business is responsible for the recordkeeping and reporting requirements under the GTOs only when such agents are acting on its behalf in connection with a Covered Transaction.

4) What methods of payment are covered under Section II.A.2.iv of the GTOs?

Section II.A.2.iv of the GTOs, which lists one of the four criteria that triggers a Covered Transaction, provides: “Such purchase is made, at least in part, using currency or a cashier’s check, a certified check, a traveler’s check, a personal check, a business check, or a money order in any form, a funds transfer, or virtual currency.” Accordingly, payment of at least part of the purchase price using one of these methods, such as virtual currency, a wire transfer, a cashier’s check (sometimes referred to as a “bank check,” “official check,” or “treasurer’s check”), a personal check, a business check, or a certified check, triggers a Covered Transaction, assuming the other three criteria listed in Section II.A.2 are met. With respect to information required to be reported in Field 25.z of the FinCEN Currency Transaction Report, the Covered Business should include the total amount of the purchase price of the Covered Transaction. When reporting a purchase of multiple properties in the same Covered Transaction, report total purchase price in Part II, Field 25.z, and price per property in Field 41 for each property.

5) Is there a *de minimis* exception regarding the methods of payment covered under Section II.A.2.iv of the GTOs?

No. If any part of the purchase price was made using a method of payment specified in Section II.A.2.iv of the GTOs, then the transaction is considered a Covered Transaction (assuming the other three criteria listed in Section II.A.2 are met). FinCEN expects a Covered Business to take reasonable steps to determine whether any part of the purchase price was made using a method of payment specified in Section II.A.2.iv of the GTOs. FinCEN recognizes that in some instances a small percent of the purchase price of a residential real estate transaction may be held by a third party, such as a real estate agent holding an earnest money deposit. A Covered Business may reasonably rely on information provided to it by such third parties.

6) Who is the “individual primarily responsible for representing the Purchaser”?

The “individual primarily responsible for representing the Purchaser” means the individual authorized by the entity to enter legally binding contracts on behalf of the entity.

7) How long must a Covered Business retain records relating to compliance with the GTOs?

Consistent with the general recordkeeping provisions of the regulations promulgated under the Bank Secrecy Act, a Covered Business must retain all records relating to compliance with the GTOs for at least five years from the last day that the GTOs are effective (including any renewals thereof).

8) How must a Covered Business file a FinCEN Currency Transaction Report?

A sample Currency Transaction Report template is located at this link: https://bsafiling.fincen.treas.gov/docs/GTO/RealEstate_GTO_Template.pdf. (If opening this link in Chrome, please note that you must click the download icon in the top right; once downloaded, you may open the PDF using Adobe Reader.) This Adobe PDF template can be saved and reused. Once a Covered Business has filled out the template for a Covered Transaction, the Covered Business will need to log into the BSA E-Filing System, select Report 112–CTR under the “File FinCEN Reports” section, then choose the “Open Existing Report” option, browse to the saved template, and Sign, Save, and Submit the Currency Transaction Report.