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Tax Notes

FinCEN Renews and Expands Geographic Targeting Orders for Residential Real Estate Deals

By Peter D. Baum, CPA, Partner

The U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) recently announced the six-month renewal of the existing Geographic Targeting Orders (GTOs) relating to money laundering concerns associated with all-cash purchases of high-end residential real estate properties.

The GTOs were originally issued in January 2016 and reissued and expanded in scope several times since then. They require U.S. title insurance companies to identify and report the ultimate beneficial owners behind legal entities which make certain all-cash real estate purchases.

Expanded Geographic Areas

The renewed GTOs cover both the original areas in New York, Florida, California, Hawaii and Texas, and expand jurisdictions to include parts of the states of Nevada, Washington, Massachusetts and Illinois.

These orders represent yet another expansion of the initial January 2016 GTOs that targeted the real estate markets in only New York and Miami. The renewed GTOs require U.S. title insurance companies to identify the natural persons who are the ultimate beneficial owners of limited liability companies, partnerships and other legal entities involved in all-cash residential real estate sales in the following locations:

- Bexar, Tarrant, and Dallas counties in Texas;
- Miami-Dade, Broward, and Palm Beach counties in Florida;
- The five boroughs of New York City;
- San Diego, Los Angeles, San Francisco, San Mateo, and Santa Clara counties in California;
- The city and county of Honolulu in Hawaii;
- Clark County in Nevada;
- King County in Washington;
- Suffolk and Middlesex counties in Massachusetts; and
- Cook County in Illinois.

Monetary Threshold and Scope

FinCEN also drastically lowered the monetary threshold for all jurisdictions to $300,000 (formerly, the threshold was as high as $3,000,000 in several jurisdictions) and expanded the scope of the GTOs to include purchases made with virtual currencies, in addition to wire transfers, currency or checks.

As previously noted, the purchase price/monetary threshold of the current GTOs has been lowered for all jurisdictions to $300,000. This is significantly lower than the previous versions, which had varying jurisdictional thresholds as high as $3,000,000.

Reporting

As previously stated, the GTOs now cover purchases made by virtual currency, in addition to currency, wire transfer, checks (including cashier's checks), and money orders. Any covered transaction has to be reported to FinCEN by filing a FinCEN Currency Transaction Report (CTR) within 30 days of the closing of the covered transaction using the BSA E-Filing system.

Records relating to compliance with the GTO must be retained for a period of five years from the last day the GTO is effective including any renewals. Noncompliance with any terms of the GTO may cause liability, without limitation, for civil or criminal penalties.

Program Results

FinCEN considers the GTOs to be effective in gathering useful information on potential money laundering and that it may consider expanding them to cover other geographic areas suspected of being high-risk for money laundering through luxury real estate sales.

In a press release announcing the renewal and expansion of the GTOs, FinCEN stated that the GTO program has provided valuable data on the purchase of real estate by persons implicated or allegedly involved in illicit enterprises. Accordingly, FinCEN is likely to continue the GTO program for the foreseeable future, and may potentially expand the orders further to cover other geographic areas suspected of being high-risk for money laundering through luxury real estate.

Depending on the results of the GTOs, FinCEN may also implement further anti-money laundering compliance requirements in the real estate sector.

Effective Period

The renewed and expanded GTOs took effect on November 17, 2018, and will be in effect for 180 days (through May 15, 2019).

As We See It

On a practical level, title insurers operating in the GTO areas should make certain that their employees and compliance officers are notified of the GTO and CTR filing requirement and trained about what is entailed. They, along with other participants in the real estate market, should be on the lookout for further extensions of the order by FinCEN.

FinCEN will almost certainly investigate if all-cash purchases fall off as a result of its order (or tick upward sharply before the order takes effect) and how much. Depending on the quality of information gleaned from the CTRs and market data, FinCEN could make the CTR requirement permanent through rulemaking, expand it to other metro areas, modify the amount that triggers a filing requirement, or by a combination of these actions.

Contact Us

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