

February 18, 2022

Himamauli Das  
Acting Director  
Financial Crimes Enforcement Network  
U.S. Department of the Treasury  
P.O. Box 39  
Vienna, VA 22183

**RE: Docket Number FINCEN-2021-0007 and RIN 1506-AB54**

Dear Director Das,

I write in response to the advance notice of proposed rulemaking from the Financial Crimes Enforcement Network (FinCEN) regarding “Anti-Money Laundering Regulations for Real Estate Transactions.”<sup>1</sup> In November, I sent you a letter urging you to initiate a rulemaking to expand anti-money laundering safeguards to the real estate sector, and I commend you for doing so.<sup>2</sup> In crafting this rule, I encourage you to build off of the successful Geographic Targeting Orders (GTOs), which have imposed specific transaction reporting requirements on title insurance companies in certain metropolitan areas since 2016. Specifically, I urge you to expand these requirements nationwide, apply them to both commercial and residential real estate transactions, make them permanent, and align the definition of beneficial owner with the recently enacted Corporate Transparency Act (CTA), among other changes.<sup>3</sup>

The United States is engaged in a “clash of civilizations” between rule-of-law nations and those governed by autocracy, kleptocracy, and criminality. Regrettably, in that clash rule-of-law nations like the United States continue to aid and abet our adversaries by providing sanctuary for their stolen wealth, including by allowing anonymous transactions in the \$60 trillion U.S. real estate market.<sup>4</sup> Fortunately, years of study and analysis tell us what must be done—in short: transparency.

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<sup>1</sup> U.S. Department of the Treasury, Financial Crimes Enforcement Network, “Anti-Money Laundering Regulations for Real Estate Transactions; Advance Notice of Proposed Rulemaking,” *Federal Register* 86, no. 233 (December 8, 2021): 69589-69602, <https://www.federalregister.gov/documents/2021/12/08/2021-26549/anti-money-laundering-regulations-for-real-estate-transactions>.

<sup>2</sup> Senator Sheldon Whitehouse, “Letter to the Financial Crimes Enforcement Network,” sent November 12, 2021, <https://www.whitehouse.senate.gov/imo/media/doc/GTO%20Letter.pdf>.

<sup>3</sup> The CTA is Title LXIV of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283 (January 1, 2021).

<sup>4</sup> Zillow estimates that the total value of private, residential real estate in the U.S. is worth \$43.4 trillion, while the National Association of Real Estate Investment Trusts estimates that commercial U.S. real estate is worth \$16 trillion. See Treh Manhertz, “U.S. Housing Market has Doubled in Value since the Great Recession, Gaining \$6.9 Trillion in 2021,” *Zillow*, Jan. 27, 2022, <https://www.zillow.com/research/us-housing-market-total-value-2021->

FinCEN created the GTOs in 2016 as a six-month pilot program in response to growing concerns about bad actors using U.S. real estate markets to launder illicit cash from corrupt and criminal activities. The original order required title insurance agents to collect ownership information about companies that purchased residential property in the New York City and Miami metropolitan areas. The transactions covered were limited to those with the highest risk, including all-cash purchases of luxury real estate.<sup>5</sup> Since 2016, the program has been renewed 11 times, across multiple presidential administrations from both parties, and has been expanded to include wire transfers and encompass a dozen jurisdictions.<sup>6</sup>

The GTOs have been effective at identifying corrupt transactions. According to FinCEN, “about 30 percent of the transactions covered by the GTOs involve a beneficial owner or purchaser representative that is also the subject of a previous suspicious activity report,” corroborating FinCEN’s “concerns about the use of shell companies to buy luxury real estate in ‘all-cash’ transactions.”<sup>7</sup> Further, FinCEN believes that the “GTOs continue to provide valuable data on the purchase of residential real estate by persons possibly involved in various illicit enterprises.”<sup>8</sup> The agency also noted that “[reissuing] the GTOs will further assist in tracking illicit funds and other criminal or illicit activity, as well as inform FinCEN’s future regulatory efforts in this sector.”<sup>9</sup>

The need for FinCEN to expand the reporting requirements in the GTOs and make them permanent has only grown. Foreign investors now account for a third of institutional investment in single-family rental homes in the United States.<sup>10</sup> Property purchased to stash corrupt cash, rather than to house people, pushes middle- and low-income families out of their communities, drives up the price of real estate in newly targeted areas, and harms U.S. businesses.

Yet corrupt actors continue to escape detection by shifting their operations to non-covered jurisdictions. For example, Ukrainian oligarch Ihor Kolomoisky and his associates allegedly

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[30615/](https://www.reit.com/news/blog/market-commentary/total-size-of-us-commercial-real-estate-estimated-between-14-and-17-trillion); and Alexandra Thompson, “Total Size of U.S. Commercial Real Estate Estimated Between \$14 and \$17 Trillion,” *National Association of Real Estate Investment Trusts*, July 9, 2019, <https://www.reit.com/news/blog/market-commentary/total-size-of-us-commercial-real-estate-estimated-between-14-and-17-trillion>.

<sup>5</sup> Steve Hudak, “FinCEN Takes Aim at Real Estate Secrecy in Manhattan and Miami,” *FinCEN*, January 13, 2016, <https://www.fincen.gov/news/news-releases/fincen-takes-aim-real-estate-secrecy-manhattan-and-miami>.

<sup>6</sup> Press Release, “FinCEN Renews Real Estate Geographic Targeting Orders for 12 Metropolitan Areas,” *FinCEN*, October 29, 2021, <https://www.fincen.gov/news/news-releases/fincen-renews-real-estate-geographic-targeting-orders-12-metropolitan-areas>.

<sup>7</sup> Steve Hudak, “FinCEN Renews Real Estate “Geographic Targeting Orders” to Identify High-End Cash Buyers in Six Major Metropolitan Areas,” *FinCEN*, February 23, 2017, <https://www.fincen.gov/news/news-releases/fincen-renews-real-estate-geographic-targeting-orders-identify-high-end-cash>

<sup>8</sup> Press Release, “FinCEN Reissues Real Estate Geographic Targeting Orders for 12 Metropolitan Areas,” *FinCEN*, April 29, 2021, <https://www.fincen.gov/news/news-releases/fincen-reissues-real-estate-geographic-targeting-orders-12-metropolitan-areas-3>.

<sup>9</sup> *Ibid.*

<sup>10</sup> See Konrad Putzier, “That Suburban Home Buyer Could be a Foreign Government,” *The Wall Street Journal*, Apr. 13, 2021, available at <https://www.wsj.com/articles/that-suburban-home-buyer-could-be-a-foreign-government-11618306380>. See also Casey Michel & Paul Massaro, “The U.S. Midwest is Foreign Oligarch’s New Playground,” *Foreign Policy*, June 3, 2021, available at <https://foreignpolicy.com/2021/06/03/the-u-s-midwest-is-foreign-oligarchs-new-playground/>.

embezzled billions from the Ukraine-based PrivatBank and routed the money through the bank's Cyprus branch before it made its way to the U.S. via a series of anonymous shell companies. The money was then used to purchase commercial real estate in Louisville, Kentucky—a non-covered jurisdiction.<sup>11</sup> Similarly, the U.S. Department of Justice accused a former governor of a Mexican border state, Tomas Yarrington, of taking bribes from a drug cartel, actively contributing to the cartel's drug trafficking operations, and then laundering that drug money in the United States, including by purchasing real estate in South Padre Island, Texas—a non-covered jurisdiction. Yarrington pled guilty to money laundering in March 2021.<sup>12</sup>

At a time when the Biden administration has designated the fight against foreign corruption a core national security interest,<sup>13</sup> the United States can no longer afford to follow the movement of corrupt money from GTO-covered jurisdictions to non-covered jurisdictions—or worse, to indirectly *drive* corrupt money from covered jurisdictions to non-covered jurisdictions. FinCEN must use this rulemaking as an opportunity to prevent kleptocrats and corrupt actors from hiding their illicit gains in the U.S. real estate market, to plug holes through which illicit cash can flow, and to protect the U.S. financial system.

This rulemaking should codify the reporting requirements from the GTO program, with several changes:<sup>14</sup>

- **Expand the coverage to the entire United States.**<sup>15</sup> Illicit money has and will continue to move to non-covered jurisdictions. FinCEN must use its authority to require title insurance agents to collect beneficial ownership information for each transaction in *every* U.S. city and town.
- **Make the rules permanent.** While the GTO program has proven useful, FinCEN's current approach has also proven to be unacceptably unpredictable and burdensome. The program is dogged by questions of whether particular GTOs will be continued, whether particular jurisdictions will be covered, and whether the dollar thresholds will be

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<sup>11</sup> See Andrew E. Kramer, “U.S. Sanctions Key Ukrainian Oligarch, Ihor Kolomoisky,” The New York Times, Mar. 5, 2021, available at <https://www.nytimes.com/2021/03/05/world/europe/ukraine-sanctions-oligarch-kolomoisky.html>.

<sup>12</sup> See Jason Buch, “Former Mexican governor, accused of laundering millions in San Antonio and Texas, pleads guilty,” San Antonio Express News, Mar. 27, 2021, available at <https://www.expressnews.com/news/local/article/Former-Mexican-governor-accused-of-laundering-16053602.php>.

<sup>13</sup> The White House, “Statement by President Joseph R. Biden, Jr. On the National Security Study Memorandum on the Fight Against Corruption,” June 3, 2021, available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/03/statement-by-president-joseph-r-biden-jr-on-the-national-security-study-memorandum-on-the-fight-against-corruption/>.

<sup>14</sup> Expert organizations such as Transparency International and Global Financial Integrity have issued similar calls, and conducted extensive research illustrating how gaps in the current approach have facilitated money laundering and other criminal activities. See Transparency International U.S. Office, “U.S. Real Estate Market is a Magnet for Money Laundering,” July 2021, available at <https://us.transparency.org/resource/geographic-targeting-orders-factsheet/>. See also Global Financial Integrity, “Acres of Money Laundering: Why U.S. Real Estate is a Kleptocrat's Dream,” August 2, 2021, available at <https://gfintegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream/>.

<sup>15</sup> Encompassing each jurisdiction within each state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other commonwealth, territory, or possession of the United States.

changed. This creates uncertainty for real estate professionals, and limits its ability to develop training programs and guidance for implementation.

- **Eliminate the dollar thresholds for coverage.** FinCEN originally created minimum dollar thresholds specific to each covered jurisdiction. But as the program expanded to cover new jurisdictions, these area-specific thresholds became more cumbersome and complicated, outweighing any benefits they provided. In response, FinCEN adopted one standard for all covered jurisdictions. FinCEN should help reduce the cost of implementation by eliminating the dollar threshold entirely.
- **Add commercial transactions.** Because they routinely involve multiple buyers and a variety of financing mechanisms, commercial transactions are often more complicated than residential transactions. The complicated, opaque nature of these purchases makes them higher risk, and thus worthy of being covered going forward.
- **Align the definition of beneficial owner with the CTA.**<sup>16</sup> The CTA included a comprehensive and clear definition of beneficial owner which will apply to the vast majority of entities doing business in the United States. FinCEN should adopt the CTA's definition of beneficial owner for this rule to minimize loopholes which could be exploited and to simplify compliance with the new reporting requirements.
- **Collect beneficial ownership information for certain sellers.** In addition to documenting the buyers' beneficial ownership information, the rule should require the disclosure of the sellers' beneficial ownership information if the sellers did not disclose such information when they purchased the property.
- **Document the source of funds.** In addition to the buyer's beneficial ownership information, the rule should also require the collection and filing of documentation on the sources of funds used in the transactions.
- **Ensure someone is always responsible for filing.** It is important to ensure that information is disclosed to FinCEN even if a title insurance company is not involved in a particular real estate transaction. FinCEN's rule should ensure that someone is always responsible for reporting this information, and it should provide a clear set of guidance indicating exactly who is responsible for reporting in each possible scenario.

While the CTA provisions in the Anti-Money Laundering (AML) Act of 2020 require U.S. business entities to report their ownership information to FinCEN,<sup>17</sup> new real estate reporting requirements remain necessary to effectively combat corruption. Without this rulemaking, offshore entities, for instance, can still anonymously buy U.S. real estate, and it appears as though certain legal entities formed in the United States may still evade the CTA's reporting

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<sup>16</sup> 31 U.S.C. § 5336(a)(3).

<sup>17</sup> The AML Act is Division F of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283 (January 1, 2021), which includes the CTA.

requirements.<sup>18</sup> Fortunately, Congress explicitly provided FinCEN with additional authority in the AML Act to expand the reporting requirements in the GTO program.<sup>19</sup>

Thank you again for the work you do to combat money laundering, transnational drug trafficking, and other illicit uses of the U.S. financial system that fuel global corruption and kleptocratic regimes. I look forward to working with you throughout this rulemaking process to ensure that the final rule is as strong as possible.

Sincerely,



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Sheldon Whitehouse  
United States Senator

CC: The Honorable Janet Yellen, U.S. Secretary of the Treasury

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<sup>18</sup> For example, the CTA included 23 exemptions to the definition of reporting company, and FinCEN’s proposal on “Beneficial Ownership Information Reporting Requirements” would exempt domestic entities that are not “created by the filing of a document with a secretary of state or a similar office under the law of a state or Indian Tribe” as well as foreign entities that are not “registered to do business in the United States by the filing of a document with a secretary of state or equivalent office under the law of a state or Indian Tribe.” *See* 31 U.S.C. § 5336 (a)(11)(B) *and* U.S. Department of the Treasury, Financial Crimes Enforcement Network, “Beneficial Ownership Information Reporting Requirements, Notice of Proposed Rulemaking,” *Federal Register* 86, no. 233 (December 8, 2021): 69920-69974, <https://www.federalregister.gov/documents/2021/12/08/2021-26548/beneficial-ownership-information-reporting-requirements>.

<sup>19</sup> *See* AML Act at § 6102(c).