

November 12, 2021

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

**RE: Expand and make permanent the GTO program**

Dear Director Das,

I write to urge you to initiate rulemaking to expand and make permanent the use of Geographic Targeting Orders (GTOs),<sup>1</sup> which play an important role in combating money laundering, transnational drug trafficking, and other illicit uses of the U.S. financial system that fuel global corruption and kleptocratic regimes.

The Financial Crimes Enforcement Network (FinCEN) created GTOs in 2016 as a six-month pilot program in response to growing concerns about corrupt actors using U.S. real estate markets to launder illicit cash from criminal activities such as the narcotics trade. 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. Since 2016, the program has been renewed 10 times, across multiple presidential administrations, and has been expanded to include a dozen jurisdictions.

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.” Further, FinCEN believes that “GTOs continue to provide valuable data on the purchase of residential real estate by persons possibly involved in various illicit enterprises,” and that “[r]eissuing 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.”

The need for FinCEN to expand 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>2</sup> Property purchased to stash corrupt cash, rather than

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<sup>1</sup> See 31 U.S.C. § 5326(a); 31 C.F.R. § 1010.370; and Treasury Order 180-01.

<sup>2</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

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 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>3</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.<sup>4</sup>

At a time when the Biden administration has designated the fight against foreign corruption a core national security interest,<sup>5</sup> the United States can no longer afford to inch ahead in an attempt 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 act now to prevent kleptocrats and corrupt actors from hiding their illicit gains, to plug holes through which illicit cash can flow, and to protect the U.S. financial system. FinCEN should initiate a rulemaking that makes four changes to the GTO program:<sup>6</sup>

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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/>.

<sup>3</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>4</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>5</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>6</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://gfindegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream/>.

- **Expand the coverage to the entire U.S.** 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 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 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.
- **Consider adding 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.

While a new anti-money laundering law requires U.S. business entities to report their ownership information to FinCEN,<sup>7</sup> these changes remain necessary to effectively combat corruption. Offshore entities, for instance, will still be able to anonymously buy into the U.S. real estate market. Rather, Congress explicitly provided FinCEN with additional authority in the new law to expand the GTO program.<sup>8</sup>

I urge you to act on this authority as soon as possible. Doing so will not only advance U.S. security interests, but will help alleviate the suffering of people impacted by corruption around the world.

Thank you for your consideration of this request.

Sincerely,

Sincerely,



Sheldon Whitehouse  
United States Senator

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<sup>7</sup> See The William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, H.R. 6395, 116th Cong. (2020) § 6403.

<sup>8</sup> *Id.* at § 66102(c).