



July 2020

ANTI-MONEY LAUNDERING

FinCEN Should Enhance Procedures for Implementing and Evaluating Geographic Targeting Orders

GAO Highlights

Highlights of [GAO-20-546](#), a report to congressional requesters

Why GAO Did This Study

Bad actors seeking to launder money can use legal entities, such as shell companies, to buy real estate without a loan. Doing so potentially can conceal the identities of bad actors and avoid banks' anti-money laundering programs. To better understand this risk and help law enforcement investigate money laundering, FinCEN issued its real estate GTO. Although GTOs are limited to 180 days, they may be renewed if FinCEN finds reasonable grounds for doing so.

Because of concerns about the potential for bad actors to exploit regulatory gaps to launder money through the U.S. real estate market, GAO was asked to review FinCEN's real estate GTO. This report examines, among other things, the GTO's issuance and renewal, oversight, outreach, and evaluation.

GAO reviewed FinCEN's records, orders, and policies and procedures; laws and regulations; and studies and other related materials. GAO also interviewed FinCEN, federal law enforcement agencies, and other stakeholders.

What GAO Recommends

GAO recommends that FinCEN provide additional direction for self-initiated GTOs, including how to plan for oversight, outreach, and evaluation. FinCEN concurred with GAO's recommendation.

View [GAO-20-546](#). For more information, contact Michael E. Clements, 202-512-8678, ClementsM@gao.gov.

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FinCEN Should Enhance Procedures for Implementing and Evaluating Geographic Targeting Orders

What GAO Found

To combat money laundering, the Financial Crimes Enforcement Network (FinCEN) issued a geographic targeting order (GTO) in 2016 that required title insurers to report information on certain all-cash purchases of residential real estate by legal entities in specified areas. According to FinCEN analysis, the use of legal entities to purchase high-value real estate, particularly in certain U.S. cities, was prone to abuse. FinCEN determined that imposing the real estate GTO reporting requirements on title insurers would cover a large number of transactions without unnecessary complexity. FinCEN renewed the real estate GTO multiple times—finding it has yielded information useful to law enforcement investigations—and periodically expanded the types of monetary instruments and geographic areas included and decreased the price reporting threshold (see fig.).

Issuance and Renewals of the Real Estate Geographic Targeting Order (GTO)

	GTO 1 Mar. 2016 to Aug. 2016	GTO 2 Aug. 2016 to Feb. 2017	GTO 3 Feb. 2017 to Aug. 2017	GTO 4 Sept. 2017 to Mar. 2018	GTO 5 Mar. 2018 to Sept. 2018	GTO 6 Nov. 2018 to May 2019	GTO 7, 8, and 9 May 2019 to Nov. 2020
Purchase price reporting threshold	≥\$3M - ≥\$1M (varied by area)	\$500K - \$3M (varied by area)	\$500K - \$3M (varied by area)	\$500K - \$3M (varied by area)	\$500K - \$3M (varied by area)	≥\$300K (all areas)	≥\$300K (all areas)
Types of monetary instruments covered	 Currency Money order Checks: -Cashier's -Certified -Traveler's	 Checks: -Personal -Business		 Funds transfer		 Virtual currency	
Geographic areas covered (residential real property purchases)							

Source: GAO analysis of the Financial Crimes Enforcement Network's real estate geographic targeting orders. | GAO-20-546

Unlike prior GTOs, which FinCEN officials said they issued at the request of and with the involvement of law enforcement agencies, FinCEN issued the real estate GTO on its own initiative. Thus, FinCEN had to take the lead in implementing and evaluating the GTO but lacked detailed documented procedures to help direct the GTO's implementation and evaluation—contributing to oversight, outreach, and evaluation weaknesses. For example, FinCEN did not begin examining its first title insurer for compliance until more than 3 years after issuing the GTO and did not assess whether insurers were filing all required reports. Similarly, while FinCEN initially coordinated with some law enforcement agencies, it did not implement a systematic approach for outreach to all potentially relevant law enforcement agencies until more than 2 years after issuing the GTO. FinCEN also has not yet completed an evaluation of the GTO to determine whether it should address money laundering risks in residential real estate through a regulatory tool more permanent than the GTO, such as a rulemaking. Strengthening its procedures for self-initiated GTOs should help FinCEN more effectively and efficiently implement and manage them as an anti-money laundering tool.

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Abbreviations

BSA/AML	Bank Secrecy Act/anti-money laundering
DEA	Drug Enforcement Administration
DOJ	Department of Justice
FBI	Federal Bureau of Investigation
FinCEN	Financial Crimes Enforcement Network
GTO	geographic targeting order
ICE-HSI	Immigration and Customs Enforcement Homeland Security Investigations
IRS	Internal Revenue Service
IRS-CI	IRS-Criminal Investigation
SAR	suspicious activity report
Treasury	Department of the Treasury
USAO	U. S. Attorney's Office

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July 14, 2020

The Honorable Sheldon Whitehouse
Ranking Member
Subcommittee on Crime and Terrorism
Committee on the Judiciary
United States Senate

The Honorable Chris Van Hollen
United States Senate

All-cash purchases of high-end residential real estate in major U.S. metropolitan areas by legal entities, including shell companies, have raised significant concerns for the Financial Crimes Enforcement Network (FinCEN) and law enforcement about money laundering.¹ Such concerns include that individuals can use ill-gotten gains to buy real estate through legal entities to conceal their personal identity, assets, and source of funds.² In 2015, several media reports highlighted the growing problem of anonymous legal entities being used to purchase high-end real estate.³ Additionally, over the past decade, FinCEN and law enforcement agencies found that fraudsters and drug traffickers used criminal proceeds and legal entities to buy millions of dollars in U.S. residential property.⁴

When bad actors purchase real estate without financing from banks or similar lenders, they could avoid the anti-money laundering (AML) monitoring programs that banks put in place under the Bank Secrecy Act

¹Shell companies—formed for both legitimate and illicit purposes—typically have no physical presence other than a mailing address, employ no one, and produce little-to-no independent economic value. Money laundering generally is the process of converting proceeds from illicit activities into funds and assets in the financial system that appear to be from legitimate sources. See 18 U.S.C. § 1956 (criminalizing the laundering of monetary instruments).

²For example, see GAO, *Company Formations: Minimal Ownership Information Is Collected and Available*, [GAO-06-376](#) (Washington, D.C.: Apr. 7, 2006).

³For example, see Louise Story, Stephanie Saul, et al., “Towers of Secrecy Parts 1–5,” *New York Times* (February 7, 2015 through December 14, 2015).

⁴For example, see Jennifer Shasky Calvery, and Kevin Bell, “Lifestyles of the Rich and Infamous: Confronting Dirty Money in US Real Estate,” *Harvard International Review*, vol. 37, no. 4 (2016): 71-75.

(BSA) to help identify and report suspicious activity to FinCEN and law enforcement agencies.⁵ Currently, persons involved in real estate settlements and closings are required under the BSA to report to FinCEN cash payments greater than \$10,000 received in a trade or business, but they, unlike banks or certain other types of financial institutions, do not currently have AML program requirements by regulation.⁶

Following media reports and its longstanding interest in money laundering through real estate, FinCEN issued a geographic targeting order (GTO) in January 2016 to address money laundering risks in residential real estate (real estate GTO).⁷ A GTO is an order issued by FinCEN (historically at the request of law enforcement) that imposes additional reporting and recordkeeping requirements on businesses in a specified geographic area.⁸ According to FinCEN officials, the real estate GTO was the first

⁵The Currency and Foreign Transactions Reporting Act, its amendments, and the other related statutes are often referred to collectively as the Bank Secrecy Act. See Bank Secrecy Act, Pub. L. No. 91-508, 84 Stat. 1114-24 (1970) (codified as amended in scattered sections of 12 U.S.C., 18 U.S.C., and 31 U.S.C.). Regulations implementing the Bank Secrecy Act primarily appear in 31 C.F.R. Ch. X. The BSA requires certain financial institutions to keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding \$10,000 (daily aggregate amount), and report suspicious activity that might signify money laundering, tax evasion, or other criminal activities. The BSA's requirements are sometimes referred to as an "anti-money laundering law" (AML) or jointly as BSA/AML.

⁶Each person engaged in a trade or business who, in the course of that trade or business, receives more than \$10,000 in cash in one transaction or in two or more related transactions must file Form 8300. See 31 U.S.C. § 5331; 31 C.F.R. § 1010.330. Form 8300 may be filed voluntarily for any suspicious transaction for use by FinCEN and the Internal Revenue Service, even if the total amount does not exceed \$10,000.

⁷FinCEN initially issued two separate real estate GTOs for the residential real estate industry in Manhattan and Miami-Dade County. The two GTOs had the same terms, except for their geographic coverage and total purchase price threshold. When FinCEN renewed the two GTOs, it combined them into one. For simplicity of presentation, we treat these two initial real estate GTOs as a single order.

⁸The Director of FinCEN may issue an order that imposes certain additional recordkeeping and reporting requirements on one or more domestic financial institutions or nonfinancial trades or businesses in a geographic area. See 31 U.S.C. § 5326(a); 31 C.F.R. § 1010.370; and Treasury Order 180-01 (July 1, 2004), *reaffirmed* Jan. 14, 2020. GTOs are limited by statute to no more than 180 days. 31 U.S.C. § 5326(d). But the FinCEN Director may renew a GTO if reasonable grounds exist for doing so. 31 U.S.C. § 5326(d).

one to be issued at FinCEN's own initiative.⁹ It required covered businesses—title insurance companies—to report information about individuals who own legal entities (called beneficial owners) and used their legal entities to purchase residential real estate in certain all-cash transactions (those not involving a mortgage or similar form of financing).¹⁰ The real estate GTO initially covered properties in Manhattan, New York, and Miami-Dade County, Florida. FinCEN has continued to renew the GTO about every 180 days, with the most recent renewal in May 2020.

You expressed concerns about the potential for bad actors to exploit AML regulatory gaps to launder money through the U.S. real estate market. In light of such concerns, you requested that we review FinCEN's real estate GTO. This report examines (1) FinCEN's real estate GTO, including issuance and renewal, oversight, outreach, and evaluation; (2) federal law enforcement use of GTO reports; and (3) other tools to provide law enforcement with information about beneficial owners of legal entities.

To examine FinCEN's real estate GTO, we reviewed the BSA and its implementing regulations, including the GTO provisions. We reviewed FinCEN's GTO standard operating procedures for approving, issuing, and evaluating a GTO; the terms of the real estate and other GTOs; and administrative records for the real estate GTO.¹¹ We assessed these policies and procedures against relevant federal internal control

⁹According to FinCEN officials, the agency has issued at least eight GTOs covering other financial activities and businesses at the request of law enforcement since 1996. FinCEN may make the existence or terms of a GTO confidential and not allow covered businesses to disclose such information.

¹⁰Under its real estate GTO, FinCEN defines a beneficial owner as any individual who, directly or indirectly, owns 25 percent or more of the equity interest of the legal entity purchasing real property in the covered transaction. For the real estate GTO, FinCEN generally has defined a "legal entity" as a corporation, limited liability company, partnership, or other similar business entity, whether formed under the laws of a state, the United States, or a foreign jurisdiction. The definition of legal entity includes shell companies. Beginning with the GTO issued in November 2019, publicly traded companies were not included in the definition of "legal entity." Title insurance is designed to guarantee clear ownership of a property that is being sold.

¹¹When FinCEN issues or renews a GTO, FinCEN staff prepares an administrative record for the director, which is an internal memorandum that describes, among other things, the problem to be addressed by the GTO, anticipated impact of the GTO, and scope of the GTO. The record is routed through FinCEN's senior management.

standards.¹² We also reviewed relevant FinCEN studies, press releases, speeches, and congressional testimonies. We analyzed documents on the real estate GTO covering the period from January 2016 through May 2020. In addition, we reviewed relevant GAO reports and academic, government, and industry studies.

We interviewed officials from FinCEN and officials from the Drug Enforcement Administration (DEA), Department of Justice Criminal Division (DOJ-CD), Federal Bureau of Investigation (FBI), U.S. Attorney's Offices (USAO) in the southern districts of Florida and New York, and the Organized Crime and Drug Enforcement Task Force in the Department of Justice; Immigration and Customs Enforcement Homeland Security Investigations (ICE-HSI) and the El Dorado Task Force in the Department of Homeland Security; and the Internal Revenue Service Criminal Investigation (IRS-CI) in the Department of the Treasury (Treasury) about their interactions with FinCEN. Finally, we interviewed title insurance companies and real estate industry associations about FinCEN and the real estate GTO and reviewed documents and communications that these associations provided to their members on complying with the GTO.

To examine federal law enforcement use of GTO reports, we reviewed studies, reports, court cases, congressional testimonies, and other materials issued by federal law enforcement agencies about their efforts to investigate and prosecute money laundering. We also interviewed officials from federal law enforcement agencies identified above.

To examine other tools for providing information about beneficial owners, we reviewed legislative proposals for creating a national beneficial ownership registry in the United States and requirements of beneficial ownership registries created in other countries. We also interviewed academics, trade associations, think tanks, and experts in financial crimes and money laundering or shell companies. We reviewed information issued by the Financial Action Task Force, including recommended best practices for implementing beneficial ownership policies.¹³

¹²GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

¹³The Financial Action Task Force is an inter-governmental policy-making body that works to set standards and promote effective implementation of legal, regulatory, and operational measures for combating money laundering, terrorist financing, and other related threats to the integrity of the international financial system.

We conducted this performance audit from March 2019 to July 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The BSA authorizes the Secretary of the Treasury to issue regulations requiring financial institutions to keep records and file reports the Secretary determines “have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.”¹⁴ The Secretary also is authorized to impose AML program requirements on certain financial institutions.¹⁵ The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.¹⁶

U.S. financial institutions can assist government agencies in the detection and prevention of money laundering and terrorist financing by complying with BSA/AML requirements. BSA/AML requirements for financial institutions include recordkeeping and reporting requirements, such as to file suspicious activity reports (SAR) when institutions suspect money

¹⁴See 31 U.S.C. § 5311.

¹⁵31 U.S.C. §§ 5312(a)(2), 5318(a)(2), (h).

¹⁶31 C.F.R. § 1010.810(a); Treasury Order 180-01 (July 1, 2004), *reaffirmed* Jan. 14, 2020. FinCEN was established in 1990 to support government agencies by collecting, analyzing, and disseminating financial intelligence information to combat money laundering. FinCEN is a Treasury bureau that reports to Treasury’s Under Secretary for Terrorism and Financial Intelligence and also serves as the Financial Intelligence Unit of the United States (a national center for receipt and analysis of suspicious activity reports and other information relevant to money laundering, predicate offenses, and terrorist financing, and dissemination of analysis results).

laundering, tax evasion, or other criminal activities and currency transaction reports on cash transactions exceeding \$10,000.¹⁷

FinCEN's GTO Authority

The FinCEN director may issue a GTO if the director concludes based on reasonable grounds that additional recordkeeping and reporting requirements are necessary to carry out the purposes or prevent evasions of the BSA. The director may use a GTO to impose additional recordkeeping and reporting requirements on domestic financial institutions or nonfinancial trades or businesses in a geographic area for transactions involving the payment, receipt, or transfer of funds. These orders may be effective for no more than 180 days but can be renewed.¹⁸ FinCEN officials told us the agency issued at least eight prior GTOs at the request of law enforcement that covered a variety of businesses before issuing the real estate GTO in 2016.¹⁹

AML Requirements for the Real Estate Industry

Persons involved in real estate closings and settlements, which could include closing attorneys, appraisers, and title insurance companies, fall under the BSA definition of a "financial institution," but FinCEN regulations do not currently require these entities to establish AML programs.²⁰ In 1988, Congress broadened the BSA's definition of

¹⁷SARs are reports certain financial institutions must file if a transaction involves or aggregates at least a certain dollar threshold in funds or other assets (\$5,000 in the case of banks), and the institution knows, suspects, or has reason to suspect that the transaction is designed to evade any BSA requirements or involves money laundering, tax evasion, or other criminal activities. Currency transaction reports are reports institutions generally must file when customers make large cash transactions, currently defined by regulation as those exceeding \$10,000.

¹⁸31 U.S.C. § 5326(d).

¹⁹For example, FinCEN issued GTOs in 1996 covering money services businesses in the New York metropolitan area sending remittances to Colombia; in 1997 covering money services businesses in the New York metropolitan area sending remittances to the Dominican Republic; in 2014 and 2015 covering armored cars and other cash couriers carrying cash over the U.S./Mexico border; in 2014 covering the fashion district in Los Angeles, California; in 2015 covering electronics exporters in Miami; and in 2015 covering check cashers in Miami-Dade and Broward counties in Florida that cashed large tax refund checks.

²⁰See 31 C.F.R. § 1010.205(b)(1)(v); 77 Fed. Reg. 8148 (Feb. 14, 2012). Under the BSA, certain financial institutions are required to establish AML programs that at a minimum include (1) the development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. The BSA's implementing regulations also require covered financial institutions to meet additional requirements, such as filing suspicious activity reports.

“financial institution” to include “persons involved in real estate closings and settlements.”²¹ In 2001, the USA PATRIOT Act amended the BSA to require certain financial institutions, including “persons involved in real estate closings and settlements,” to establish AML programs.²² However, in 2002, FinCEN temporarily exempted several categories of financial institutions, including those involved in real estate settlements and closings, from these requirements to provide more time to study the affected industries.²³ In 2003, FinCEN issued an advance notice of proposed rulemaking to solicit comments on appropriate requirements for AML programs applicable to persons involved in real estate closings and settlements but did not pursue the rulemaking further at the time.²⁴

In 2012, FinCEN focused its efforts on enhancing AML requirements for real estate transactions involving financing, in part because the financed portion of the real estate market was a significant target for fraud and other financial crimes during the 2007—2009 financial crisis.²⁵

Specifically, FinCEN finalized a rule to require nonbank residential mortgage lenders and originators to establish AML programs and report suspicious activities under the BSA, as banks and other depository institutions already were required to do.²⁶ This rule subjected the majority

²¹Pub. L. No. 100–690, § 6185(a), 102 Stat. 4181 (1988).

²²Pub. L. No. 107-56, § 352, 115 Stat 272, 322 (2001).

²³See 67 Fed. Reg. 21110 (Apr. 29, 2002), as amended at 67 Fed. Reg. 67547 (Nov. 6, 2002), corrected at 67 Fed. Reg. 68935 (Nov. 14, 2002), recodified at 75 Fed. Reg. 65806 (Oct. 26, 2010) (codified as amended at 31 C.F.R. § 1010.205).

²⁴See Financial Crimes Enforcement Network, Anti-Money Laundering Program Requirements for “Persons Involved in Real Estate Closings and Settlements,” 68 Fed. Reg. 17569 (Apr. 10, 2003). The advance notice of proposed rulemaking noted that the term “persons involved in real estate closings and settlements” could include attorneys who represent the purchaser or seller, escrow agents, appraisers, title insurance companies, real estate brokers, banks, mortgage brokers, or other financing entities, and elicited comment on which of these participants should be subject to AML requirements.

²⁵FinCEN also has taken action to address money laundering in the secondary residential mortgage market, such as through a rulemaking for housing government-sponsored enterprises.

²⁶See Financial Crimes Enforcement Network, Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Residential Mortgage Lenders and Originators, 77 Fed. Reg. 8148 (Feb. 14, 2012).

of residential real estate transactions to BSA/AML protections and safeguards.²⁷

FinCEN first issued its real estate GTO in 2016, as discussed more fully below, which imposed particular reporting requirements on title insurance companies for certain nonfinanced transactions.²⁸ In August 2017, FinCEN issued an advisory directed to real estate professionals and others, which shared information on money laundering risks associated with certain real estate transactions. The advisory was intended to help real estate professionals identify activities that may warrant the filing of SARs. Although “persons involved in real estate closings and settlements” are not currently subject to AML program requirements, such persons can voluntarily file SARs under the SAR safe harbor provision of the BSA.”²⁹

Real Estate GTO and Expansion of AML Reporting Requirements for Title Insurance Companies

In January 2016, FinCEN announced its first real estate GTO, which became effective on March 1, 2016. According to FinCEN, the purposes of the GTO were to (1) produce valuable information that would assist law enforcement investigations, (2) inform FinCEN’s broader AML efforts in the real estate sector by enhancing the transparency of real estate transactions not currently covered by BSA’s AML regime, and (3) prevent evasion of BSA’s AML regime.

Each issuance of the real estate GTO has had an effective period of 180 days and specified the conditions under which title insurance companies

²⁷According to the National Association of Realtors, 88 percent of recent buyers financed their home purchase. National Association of Realtors, *2018 Profile of Home Buyers and Sellers* (Washington, D.C.: 2018).

²⁸In any real estate transaction, the lender providing the mortgage needs a guarantee that the buyer will have clear ownership of the property. Title insurance is designed to provide that guarantee by generally agreeing to compensate the lender (through a lender’s policy) or the buyer (through an owner’s policy) up to the amount of the loan or the purchase price, respectively. Title insurance is sold primarily through title agents, although insurers also may sell policies themselves.

²⁹Financial Crimes Enforcement Network, FIN-2017-A003, FinCEN Advisory: Advisory to Financial Institutions and Real Estate Firms and Professionals (Aug. 22, 2017). Financial institutions are protected by a safe harbor provision for both mandatory and voluntary disclosures in SARs to appropriate authorities.

must report to FinCEN information about the covered residential real estate transactions.³⁰ Information reported under the GTO includes

- the identifying information for the (1) individual primarily responsible for representing the legal entity purchasing the real property; (2) legal entity (such as a corporation, limited liability company, or partnership); and (3) beneficial owners of the legal entity (individuals with 25 percent or more ownership or interest in the legal entity);
- date of closing of the covered transaction;
- total purchase price of the covered transaction and method of payment (such as currency, certified check, personal check, or funds transfer); and
- address of the real property involved in the covered transaction.

Use of Legal Entities, Including Shell Companies, to Launder Money

Legal entities, including shell companies, have many lawful purposes but also can be used for illicit purposes because ownership and transactional information can be concealed from regulatory and law enforcement agencies.³¹ We previously reported that most states do not require ownership information at the time a company is formed, and while most states require corporations and limited liability companies to file annual or biennial reports, few states require ownership information on these reports.³² Also, company formation agents may facilitate the formation of shell companies or other types of legal entities, further shielding the identity of the individuals controlling a company.³³ At the same time, law enforcement agencies investigating companies that may have been used for illicit purposes often need to know the identity of the owners to determine responsibility for criminal actions.

³⁰FinCEN imposed the GTO requirements on title insurance companies because such companies are involved in nearly all real estate transactions. By covering title insurance companies, FinCEN determined that the real estate GTO would cover a large number of transactions in a manner that could be applied to multiple jurisdictions without unnecessary complexity.

³¹For example, a legitimate purpose for forming shell companies is to obtain financing prior to starting operations.

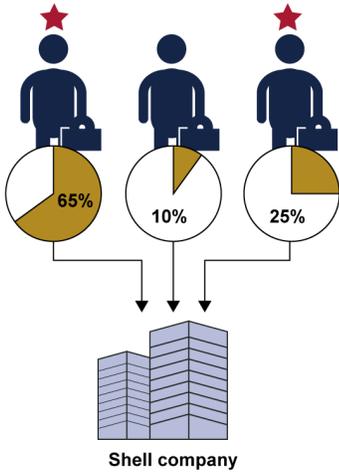
³²[GAO-06-376](#).

³³Company formation agents help create and maintain shell companies by engaging in activities such as serving as a resident agent, providing mail-forwarding services, and purchasing corporate office “service packages.” Such packages may include a state business license, a local address, an office that is staffed during business hours, a local telephone listing with a receptionist, and 24-hour personalized voicemail.

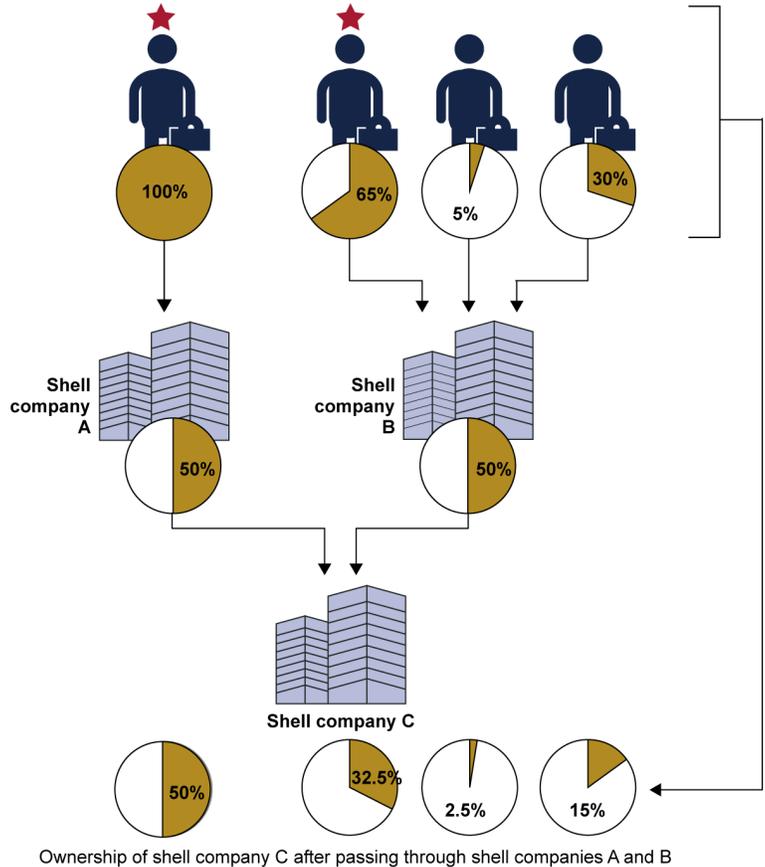
Beneficial ownership may be obscured when a shell company or other legal entity is owned by two or more companies (see fig. 1). Layers of ownership can be devised that make it difficult to discern relationships among individuals and companies, even if one or more of the owners is known or discovered.

Figure 1: Example of Layering of Beneficial Owners Using Shell Companies

Beneficial ownership of a single shell company



Beneficial ownership of property purchased through multiple shell companies



- ★ Beneficial owner (≥25% ownership/interest)
- Individual owner
- Percentage ownership

Source: GAO. | GAO-20-546

Real Estate GTO Addresses Money Laundering Risks, but Procedures to Direct Its Implementation and Evaluation Are Lacking

In 2016, FinCEN issued its first real estate GTO to help address money laundering risks in real estate and for other purposes and renewed the GTO multiple times since then. However, FinCEN lacked detailed documented procedures to direct how it would implement and evaluate such a GTO. Absent such direction, we found weaknesses in FinCEN's implementation of the real estate GTO, including oversight limitations, outreach delays, and evaluation challenges.

FinCEN Issued and Renewed the Real Estate GTO Based on Its Money Laundering Risk Assessments

Issuance of Initial Real Estate GTO

FinCEN issued the initial real estate GTO in January 2016 because it determined that additional reporting and recordkeeping were needed to prevent money laundering in residential real estate. According to FinCEN analysis, all-cash real estate purchases by a legal entity posed a money laundering risk, particularly in certain U.S. cities. FinCEN determined that issuing GTOs covering certain all-cash purchases of residential properties in Manhattan, New York, and Miami-Dade County, Florida, could help address this risk. Specifically,

- FinCEN identified actual and potential examples of the misuse of legal entities to launder money in real estate based on its review of enforcement actions, real properties forfeited under U.S. forfeiture authorities, and media reports. For example, FinCEN calculated that 599 real properties with a total value of more than \$147 million were subject to forfeiture in 2012–2015 as properties involved in violations of criminal money laundering statutes.
- FinCEN found that the use of legal entities to purchase high-value real estate was prone to abuse. A legal entity could obscure the origin of funds and identity of the beneficial owner who purchased real property, so that a bank processing a check for the transaction would have difficulty conducting appropriate AML due diligence.
- FinCEN determined that a GTO could help address the money laundering risk in real estate by providing information about beneficial

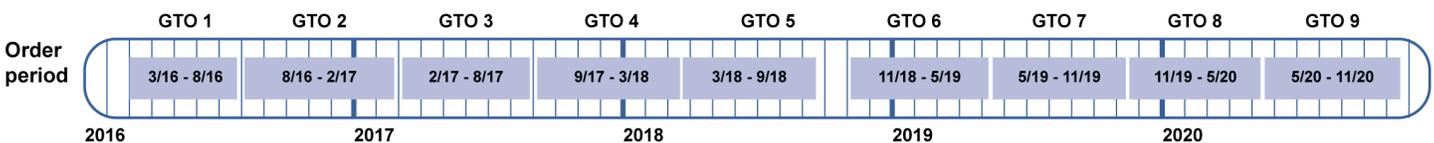
owners of legal entities used to purchase residential real estate in certain high-value transactions.

- Because title insurers are involved in the majority of U.S. real estate transactions, FinCEN determined that imposing the GTO reporting requirements on such companies would cover a large number of transactions in a manner that could be applied to multiple jurisdictions without unnecessary complexity. FinCEN concluded that the potential burden on title insurers would be mitigated by requiring them to report the information using an existing form that title insurers already were required to file if they engaged in cash transactions over \$10,000.

Renewals and Revision of Real Estate GTO

Since 2016, FinCEN publicly renewed the real estate GTO eight times (see fig. 2). As previously discussed, although a GTO is limited by statute to no more than 180 days, FinCEN may renew a GTO if it finds reasonable grounds to do so. FinCEN renewed the GTO generally based on its conclusion that the GTO continued to produce valuable information to assist law enforcement investigations and provide additional data to inform FinCEN’s broader efforts to combat money laundering in real estate.

Figure 2: Timeline of Public Real Estate Geographic Targeting Orders (GTO)



Source: GAO analysis of the Financial Crimes Enforcement Network’s real estate geographic targeting orders. | GAO-20-546

FinCEN’s process for determining whether to renew the real estate GTO involved analyzing GTO reports filed by title insurance companies and discussing money laundering trends and the use of GTO data with law enforcement and other stakeholders.³⁴ For each GTO renewal, FinCEN assessed the percentage of reported transactions involving a legal entity, purchaser representative, or beneficial owner who was separately the subject of an existing SAR. FinCEN found that the percentage varied

³⁴We use “GTO data” to refer to information in reports that title insurance companies filed with FinCEN as required under the real estate GTOs.

across time and by geographic area.³⁵ According to FinCEN officials, such findings constituted independent indications that certain beneficial owners might be linked to suspicious financial activity or even some types of crime. The officials also said they are careful about how they characterize such assessments, recognizing that a SAR is a financial institution's assessment of a potentially suspicious financial activity and not a legal finding that a crime took place. FinCEN indicated that the GTO reports, in some cases, helped identify potential suspects of interest for further investigation and led to law enforcement referrals.

Based on its analysis, FinCEN identified and addressed issues that undermined the GTO's effectiveness or efficiency, including loopholes in the reporting requirements that could enable beneficial owners to evade the GTO. As shown in figure 3, FinCEN revised the GTO over time to

- add personal and business checks, funds transfers, and virtual currency to the types of transactions covered to prevent the evasion of its reporting requirements;³⁶
- include all U.S. title insurance companies to mitigate the potential for the GTO to miss relevant transactions and potential anticompetitive effects of covering only a subset of title insurance companies;
- expand the geographic scope to cover 12 metropolitan areas (17 counties and five boroughs) in nine states, partly in response to law enforcement requests;
- lower the purchase price threshold for reporting transactions in all of the metropolitan areas from a high of \$3 million to \$300,000, to assess the degree to which nonluxury residential real estate also posed money laundering risk;³⁷ and
- exclude purchases made by legal entities that are U.S. publicly traded companies, because the beneficial owners of such entities are identifiable through other business filings.

³⁵As of August 15, 2019, title insurers had reported 23,659 transactions to FinCEN pursuant to the real estate GTO. Of total reported transactions, 8,652 (37 percent) involved a person who was the subject of a SAR.

³⁶The Countering America's Adversaries Through Sanctions Act expanded the BSA's GTO provisions to include fund transfers. Pub. L. No. 115-44, § 275, 131 Stat. 886, 938 (2017) (codified at 31 U.S.C. § 5326).

³⁷The thresholds initially varied based on the metropolitan area and ranged from \$500,000 to \$3 million.

Figure 3: Revisions to the Public Real Estate Geographic Targeting Order (GTO), 2016–2020

	GTO 1 (March 2016 to August 2016)	GTO 2 (August 2016 to February 2017)	GTO 3 (February 2017 to August 2017)	GTO 4 (September 2017 to March 2018)	GTO 5 (March 2018 to September 2018)	GTO 6 (November 2018 to May 2019)	GTO 7, 8, and 9 (May 2019 to November 2020)
Purchase price reporting threshold	≥\$3,000,000 ≥\$1,000,000 (varied by geographic area)	\$500,000 - \$3,000,000 (varied by geographic area)	\$500,000 - \$3,000,000 (varied by geographic area)	\$500,000 - \$3,000,000 (varied by geographic area)	\$500,000 - \$3,000,000 (varied by geographic area)	≥\$300,000 (for all geographic areas)	≥\$300,000 (for all geographic areas)
Types of monetary instruments covered	Currency Money order Checks: -Cashier's -Certified -Traveler's	Checks: -Personal -Business	Funds transfer	Funds transfer	Funds transfer Virtual currency	Funds transfer Virtual currency	
Geographic areas covered (residential real property purchases in the following counties/boroughs)	NY: Manhattan FL: Miami-Dade	NY: Brooklyn Queens Bronx Staten Island FL: Broward Palm Beach CA: San Diego Los Angeles San Francisco San Mateo Santa Clara TX: Bexar	HI: Honolulu	HI: Honolulu	TX: Tarrant Dallas NV: Clark WA: King MA: Suffolk Middlesex IL: Cook	TX: Tarrant Dallas NV: Clark WA: King MA: Suffolk Middlesex IL: Cook	

Source: GAO analysis of the Financial Crimes Enforcement Network's real estate geographic targeting orders. | GAO-20-546

FinCEN officials told us that they recognized that not all high-end residential real estate transactions involve title insurance. According to the FinCEN officials, title insurance companies told them that only a small percentage of real estate transactions do not include the purchase of title insurance. In addition, a Treasury 2020 report noted techniques to evade GTO disclosure requirements.³⁸ For example, some purchasers may forgo title insurance in jurisdictions where state law does not require it or where the property purchased is a unit in a new development with no previous title history. Although the real estate GTO did not cover the entire universe of all-cash transactions, FinCEN viewed its approach as balancing the GTO's benefits with the costs and complexity that covering transactions not involving title insurance companies would entail.

³⁸See Department of the Treasury, *National Strategy for Combating Terrorist and Other Illicit Financing* (Washington, D.C.: Feb. 6, 2020).

FinCEN's Procedures Provide Limited Direction on Oversight, Outreach, and Evaluation for Self-Initiated GTOs

According to FinCEN officials, the real estate GTO was the first one that FinCEN issued on its own initiative. As such, the officials said that FinCEN had to take the lead in implementing and evaluating the GTO, including informing law enforcement about its potential use. They added that this role differed from FinCEN's role under the prior GTOs—which were issued at the request of law enforcement—because the requesting agencies knew about the GTOs and helped oversee the covered businesses and evaluate the GTOs.³⁹ However, contrary to federal internal control standards, FinCEN lacked detailed documented procedures to help direct the real estate GTO's implementation and evaluation.⁴⁰ The absence of such direction contributed to limitations in FinCEN's oversight of title insurance companies, delays in reaching out to law enforcement, and challenges in evaluating the GTO.

Oversight of title insurance companies. Because FinCEN issued the real estate GTO on its own initiative, it was responsible for overseeing title insurance companies. Such oversight included ensuring that the companies filed GTO reports when required and in a complete, accurate, and timely manner. To that end, FinCEN helped to educate the industry on how to comply with the real estate GTO's requirements.⁴¹ In addition, FinCEN officials said that they periodically reviewed GTO reports to identify ones that appeared to contain missing information and assessed a sample to understand whether there may have been compliance problems, confusion about how to file the reports, or other issues.⁴² Lastly, in July 2019, FinCEN started the first examination of a title insurance company to assess its compliance, developed an examination

³⁹As previously discussed, before the real estate GTO, FinCEN had issued at least eight GTOs at the request of law enforcement.

⁴⁰FinCEN had standard operating procedures that provided direction for approving, implementing, and evaluating a GTO that FinCEN issued at the request of a law enforcement agency. Because FinCEN issued the real estate GTO on its own initiative, the standard operating procedures generally did not apply to the GTO.

⁴¹According to FinCEN and industry officials, FinCEN and the American Land Title Association facilitated joint sessions to train title insurance companies about the GTO. FinCEN also provided the companies with written advice, such as answers to frequently asked questions, and operated a helpline to answer compliance questions.

⁴²In response to our data request, FinCEN found that nearly 38 percent of the real estate GTO reports filed from March 2016 through June 2019 did not identify a beneficial owner in the proper data field. FinCEN officials attributed the errors primarily to the use of a form not designed specifically for the GTO. The officials said that some companies reported the beneficial owner information in another field, a clerical error that nonetheless enabled full analysis of the identifying information for those individuals in the BSA dataset.

plan, and identified five title insurance companies for compliance examinations.

We identified weaknesses with FinCEN's oversight of title insurance companies. FinCEN's periodic reviews of GTO reports helped the agency to assess the accuracy of the reports but did not enable the agency to assess whether covered companies were filing all required GTO reports. That is, the procedures focused on the review of filed reports but did not include a broader review of instances in which reports should have been filed to determine if such filings always occurred. Additionally, FinCEN did not start its first examination of a title insurance company until more than 3 years after its issuance of the real estate GTO. FinCEN officials told us that they have not established a time frame for examining the other title insurance companies. While conducting the first examination is a positive step, FinCEN's findings from that examination may not be representative of the other 28 title insurance companies. Thus, FinCEN may lack reliable information on the level of title insurance compliance with its real estate GTO.

Law enforcement outreach. As part of its initial outreach efforts, FinCEN officials said they coordinated with federal law enforcement in the development of the GTO, briefed liaisons from certain law enforcement agencies, engaged in periodic outreach with law enforcement, and shared data from GTO reports with certain law enforcement agencies. Starting in mid-2018 and in response to instruction from the new FinCEN director, staff conducted numerous phone calls and emails with law enforcement agencies over the next year and a half to gather more information and to share analytic techniques. Additionally, in October 2019, FinCEN held its first GTO outreach event with law enforcement, and attendees included officials from various federal law enforcement agencies and U.S. Attorneys' Offices.

One of the real estate GTO's three objectives was to provide information to assist law enforcement investigations.⁴³ However, the delay in implementing a more systematic approach to outreach resulted in delayed awareness and use of GTO data by some law enforcement agencies. FinCEN did not begin to contact law enforcement systematically until more than 2 years after the real estate GTO's issuance. While FinCEN found that the GTO outreach event produced

⁴³The real estate GTO's original objectives were to (1) inform FinCEN's broader AML efforts in the real estate sector, (2) produce valuable information that would assist law enforcement investigations, and (3) prevent evasion of the BSA's AML regime.

valuable feedback, the event was held more than 3 years after the first real estate GTO. According to FinCEN officials, it did not make sense to hold the outreach event earlier, partly because one of the event's main purposes was to share and discuss analytic techniques, which did not bear results until 2019.

Evaluation of the GTO. FinCEN began planning to draft an internal evaluation report in late 2018, more than 2 years after issuing the real estate GTO. The report was expected to summarize the utility of the GTO data to law enforcement and the extent to which the real estate sector is vulnerable to money laundering based on FinCEN's analysis of GTO and other data. The report also was expected to include recommendations for future approaches to address money laundering risks in residential real estate. Future approaches could include undertaking a rulemaking or issuing additional advisory material to address the money laundering risks through a regulatory tool more permanent than a GTO. FinCEN planned to issue the report by mid-2019. But, FinCEN officials told us in March 2020 that they were uncertain when they would issue the report because they shifted their focus—staff have started to draft an after-action report on lessons learned from the GTO. FinCEN has renewed the real estate GTO eight times, but it has not completed an evaluation of the program. Without such an evaluation, FinCEN lacks information to effectively plan future actions, such as when it should terminate the GTO or whether it should address money laundering risks in residential real estate through a more permanent regulatory tool, such as a rulemaking.

When FinCEN issued the real estate GTO in January 2016, it lacked distinct standard operating procedures for a self-initiated GTO.⁴⁴ Thus, FinCEN lacked important direction on how it would implement and evaluate the real estate GTO, including how it would oversee covered businesses, conduct outreach with law enforcement, and evaluate the GTO. According to federal internal control standards and a related Treasury directive, management should implement control activities through policies.⁴⁵ Documented policies should have the appropriate level of detail needed to cover the process objectives and related risks, and

⁴⁴As discussed earlier, FinCEN had standard operating procedures that provided direction for approving, implementing, and evaluating a GTO that FinCEN issued at the request of a law enforcement agency.

⁴⁵[GAO-14-704G](#); and Department of the Treasury, *Treasury Internal Control Program*, Directive 40-04, (July 12, 2017).

may include day-to-day procedures to help employees understand the complexity of a process.

In July 2019, FinCEN issued revised standard operating procedures for law-enforcement requested and self-initiated GTOs, which it described as a set of best practices intended to guide the implementation of GTOs. However, the procedures do not provide specific direction on plans that should be developed to (1) oversee businesses covered under a self-initiated GTO, including to help ensure that they file reports when required and in a complete, accurate, and timely manner; (2) inform and obtain feedback from law enforcement agencies about a self-initiated GTO in a systematic manner; and (3) evaluate a self-initiated GTO to determine the next steps, including when to terminate the GTO and subsequently whether to undertake a rulemaking or other regulatory action to address money laundering risks in residential real estate through a more permanent regulatory tool.

In August 2019, FinCEN created the Global Investigations Division that is responsible for, among other things, managing the agency's GTO authority and appointed new leadership to manage the division.⁴⁶ In March 2020, FinCEN officials told us that the division's new leadership recently undertook a review of its GTO and other standard operating procedures and identified areas in which to improve the procedures. The officials told us they have been revising the GTO's standard operating procedures but did not provide us with documentation about or the time frame for completing the revisions. Providing more specific direction on oversight, outreach, and evaluation planning for future self-initiated GTOs would help FinCEN to avoid or mitigate some of the difficulties it experienced with the real estate GTO.

⁴⁶The division is responsible for implementing targeted investigation strategies based on FinCEN's GTO and other unique authorities under the BSA to combat illicit finance threats and related crimes, both domestically and internationally.

Law Enforcement Officials Have Used GTO Data for Investigations and Generally Support Making GTO Requirements Permanent

Federal law enforcement officials told us that they have used GTO data with other information sources to help generate leads for investigations, but did not systematically track how many investigations specifically used GTO data. Some law enforcement officials generally supported making the real estate GTO permanent.

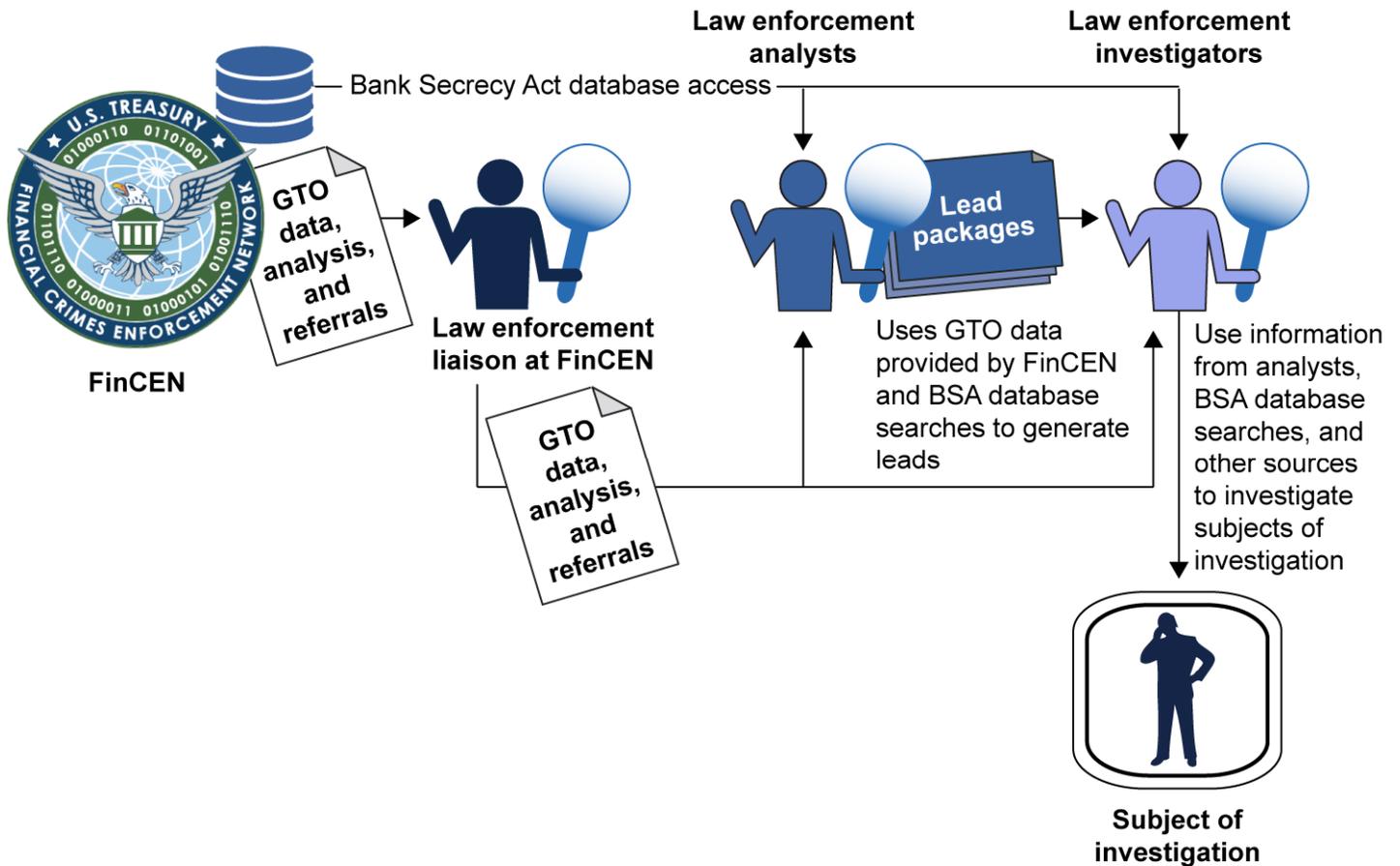
Federal Law Enforcement Agencies Have Used GTO Data for Investigations

Officials from six federal law enforcement agencies and two interagency task forces told us that their agencies have used GTO data for investigations.⁴⁷ Like FinCEN's currency transaction reports, reports filed under the real estate GTO are not necessarily indicative of potential money laundering or other criminal activity. Instead, such GTO reports provide identifying information—names, dates of birth, and taxpayer identification numbers—about persons who own legal entities used to buy residential real estate covered by the GTO.

Federal law enforcement officials told us that data from GTO reports can provide useful data points—or pieces of the puzzle—for an investigation. The officials added that law enforcement can use GTOs to start an investigation but that GTOs more often serve as a secondary source of information to assist ongoing investigations. As shown in figure 4, GTO data often are linked with other data sources to help identify a possible subject.

⁴⁷The officials were from DEA, DOJ-CD, FBI, ICE-HSI, IRS-CI, two USAOs, the Organized Crime and Drug Enforcement Task Force, and the El Dorado Task Force.

Figure 4: Lifecycle of Geographic Targeting Order (GTO) Data



Source: GAO. | GAO-20-546

More specifically, federal law enforcement officials identified the following ways in which they have used or may use GTO data.

- Generating investigative leads.** Some law enforcement agencies have used GTO data to generate leads to start or advance investigations. For example, USAO officials told us that their office identified a person suspected of laundering money through real estate by linking an individual identified in both GTOs and SARs. FBI, ICE-HSI, and IRS-CI officials told us that their agencies routinely search FinCEN's BSA database to identify any relevant BSA reports involving

their subjects.⁴⁸ FBI officials said that their searches found that nearly 7 percent of the GTO reports identified individuals or entities connected to FBI's ongoing cases since the issuance of GTO in 2016. Officials told us that more than half of these cases involved white-collar crimes, such as money laundering or bank fraud. Furthermore, FBI stated that the data provided in the GTO reports have been used to develop tactical intelligence reports across a wide range of criminal violations. Through its analysis of GTO and other data, ICE-HIS officials told us FinCEN helped to identify new subjects for an ICE-HSI case, uncovered individuals of potential interest for a USAO investigation, and provided referrals to other law enforcement agencies.

- **Conducting strategic analysis.** Some law enforcement agencies have strategically analyzed GTO data to identify trends or patterns of illicit activity. For example, FBI officials said that their agency used GTO data to conduct geospatial and temporal analyses to track real estate purchase trends in areas covered by the GTO. According to officials, by doing so, and then enriching that data with other FBI data sets, they were able to associate GTO reporting with foreign actors, SAR activity, and high-risk AML typologies otherwise not found in the original GTO filings. For example, FBI officials analyzed GTOs to see where beneficial owners were located. Similarly, USAO officials said that their offices conducted a rudimentary analysis of GTO data, in part to determine which title insurance companies were filing the most GTO reports. In addition, FinCEN officials told us they have analyzed GTO data by geographic area to identify potential systemic money laundering and to assess illicit finance risk across all GTO jurisdictions.
- **Identifying assets.** Some law enforcement officials said that GTO data could be used to identify assets for seizure or forfeiture. For example, USAO officials said that they were not aware of any cases of asset forfeiture or seizure that involved a real estate GTO report but that GTO reports provide another tool to help identify assets. Similarly, FBI officials said that they were not aware of any cases that used GTO reports to facilitate asset seizures but anticipated the reports would be helpful for such a purpose.

⁴⁸FinCEN stores currency transaction reports, suspicious activity reports, and other BSA reports in an electronic database. Law enforcement agencies can conduct electronic searches of the database to identify any BSA reports that contain information matching their subjects, such as their names, dates of birth, email addresses, or telephone numbers.

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- **Supporting prosecutions.** USAO officials said that the information underlying GTO reports has aided in prosecutions. The officials told us that GTO and other BSA reports generally are not used as evidence in court. Instead, prosecutors or agents obtain the documents underlying a GTO report, such as copies of closing documents and driver's licenses, as their evidence.

Officials from five federal law enforcement agencies told us that their agencies do not systematically track the specific types of BSA reports used in investigations and, thus, do not know precisely how many investigations their agencies have started or advanced using GTO data. Officials from the Organized Crime and Drug Enforcement Task Force said that they used GTO data to generate between six and 10 leads since the GTO was issued. Similarly, FBI officials said that their agency has used GTO reports to generate a limited number of leads, but they did not provide a specific number. As discussed earlier, officials from two task forces told us that their offices have used GTO and other BSA reports to initiate or advance investigations.

While federal law enforcement agencies have used the real estate GTO data for investigations, some agencies indicated that they need more time to develop a fuller understanding of the potential uses of the data. Officials from a joint law enforcement task force and IRS-CI told us that it is too early to assess the usefulness of GTO reports, in part because investigations can take years to complete and the value of the information may not be fully known until a case is complete. In addition, task force and USAO officials told us that the GTO reports contained an enormous amount of information that takes significant time and resources to analyze. Other law enforcement officials commented that agencies may search FinCEN's BSA database in the future and find GTO reports that are useful to investigations.

Law Enforcement Officials Generally Supported Making Real Estate GTO Requirements Permanent

Some officials from two federal task forces and a USAO official said that they generally support making the real estate GTO requirements permanent because the real estate GTO can generate useful investigative information and serve other purposes, including acting as a strong deterrent. For example, USAO officials said that GTO reports provide information about real property and its beneficial owner in one form, and obtaining both pieces of information from other sources would

require considerably more time and resources.⁴⁹ Officials from one of the task forces told us that GTO reports are a useful investigative tool but that the GTO should be used to target specific areas and not be expanded to cover the entire United States. Officials from another task force told us that assessing the effectiveness of GTO reports in the short term is difficult because investigations and prosecutions take a long time. They said making the real estate GTO requirements permanent would provide them with the time needed to assess the GTO.

In addition, FBI and USAO officials told us that the GTO has had a deterrent effect on money laundering in real estate. For example, FBI cited public reporting that indicated cash real estate transactions dramatically decreased in some targeted areas since the implementation of the GTO.⁵⁰

A Beneficial Ownership Registry and Other Actions Have Been Proposed to Reduce Money Laundering through Legal Entities

A national registry of the beneficial owners of legal entities has been proposed by members of Congress because law enforcement agencies have no other systematic way to obtain this information. Also considered has been expanding BSA/AML reporting requirements beyond title insurance companies to others in the real estate industry. Stakeholders cited potential advantages and disadvantages to each of these proposals.

⁴⁹According to the USAO officials, in the absence of a real estate GTO report, investigators would need to obtain information from previously filed cash transactions, suspicious activity, or other BSA reports, property records, and bank records of the suspects to find similar information on a real estate transaction. In some cases, investigators may need a subpoena to collect such information.

⁵⁰An academic study also found evidence that the real estate GTO had a deterrent effect on money laundering through real estate. See C. Sean Hundtofte, and Ville Rantala, "Anonymous Capital Flows and U.S. Housing Markets," University of Miami Business School Research Paper No. 18-3 (May 28, 2018), accessed March 3, 2020, <https://ssrn.com/abstract=3186634> or <http://dx.doi.org/10.2139/ssrn.3186634>.

Beneficial Ownership Registry Could Aid Law Enforcement Investigations but Would Have Compliance Costs

According to Treasury's 2018 National Money Laundering Risk Assessment, bad actors consistently use legal entities to disguise criminal proceeds, and U.S. law enforcement agencies have had no systematic way to obtain information on the beneficial owners of the legal entities.⁵¹ The report notes that the ease with which companies can be incorporated under state law, and how little information generally is required about the company's owners or activities, raises concerns about a lack of transparency. This information gap can hinder law enforcement investigations or require greater investigative resources. Similarly, in its 2016 report evaluating the U.S. AML and counter-terrorist financing regime, the Financial Action Task Force found that the lack of timely access to adequate, accurate, and current beneficial ownership information constituted a fundamental AML gap.⁵²

To help address this AML gap, FinCEN finalized the Customer Due Diligence rule in 2016.⁵³ The rule generally requires U.S. banks and certain other financial institutions to identify and verify the identity of the beneficial owners of legal entity customers (such as a shell company) when those companies open bank accounts.⁵⁴ According to Treasury's 2020 National Strategy for Combating Terrorist and Other Illicit Financing, the FinCEN rule addressed the gap in collecting beneficial ownership information at the time of an account opening, but there still is no requirement at the state or federal level to disclose beneficial ownership information at the time of company formation.⁵⁵ The report also stated

⁵¹Department of the Treasury, *National Money Laundering Risk Assessment* (Washington, D.C.: 2018).

⁵²Financial Action Task Force, *Anti-Money Laundering and Counter-Terrorist Financing Measures - United States*, Fourth Round Mutual Evaluation Report (Paris, France: December 2016).

⁵³81 Fed. Reg. 29398 (May 11, 2016).

⁵⁴The Customer Due Diligence rule has four core requirements. Covered financial institutions must establish and maintain written policies and procedures that are reasonably designed to (1) identify and verify the identity of customers; (2) identify and verify the identity of the beneficial owners of companies opening accounts; (3) understand the nature and purpose of customer relationships to develop customer risk profiles; and (4) conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. With respect to the requirement to obtain beneficial ownership information, financial institutions have to identify and verify the identity of any individual who owns 25 percent or more of a legal entity, and an individual who controls the legal entity.

⁵⁵*National Strategy for Combating Terrorist and Other Illicit Financing* (Feb. 6, 2020).

that Treasury does not have the authority to require the disclosure of beneficial ownership information at the time of company formation without legislative action.

Over the past few years, members of Congress have proposed a number of legislative measures to require the disclosure of beneficial ownership information generally at the time of formation—namely through the creation of a national beneficial ownership registry for U.S. companies.⁵⁶ The Financial Action Task Force identified such a registry as one option for addressing the misuse of legal entities, and several other countries have adopted the approach.⁵⁷ Recent legislative proposals introduced by members of Congress differ but common requirements include

- requiring certain corporations and limited liability companies to register at formation or when any changes are made to their ownership structure;
- defining beneficial owners as individuals with greater than 25 percent ownership in the corporation or limited liability company;
- reporting the name or names of beneficial owners in a registry (or database); and
- having a federal agency (such as FinCEN) maintain but limit access to the registry, such as to law enforcement on a “need-to-know” basis.

⁵⁶For example, on October 23, 2019, the House passed *The Corporate Transparency Act of 2019*, H.R. 2513, 116th Cong. (2019), which would create a beneficial ownership registry and require certain defined corporations and limited liability companies to disclose to FinCEN at the time of formation and periodically update information regarding their beneficial owners. Several bills also were introduced in the Senate to address this gap. The *True Incorporation Transparency for Law Enforcement Act*, S. 1889 116th Cong. (2019), would mandate certain existing and newly formed companies to report identifying information concerning their beneficial owners to their states of incorporation. *The Illicit Cash Act*, S. 2563 116th Cong. (2019), would require certain companies to file a report with FinCEN identifying the beneficial owner at the time of incorporation or when there is a change in any beneficial owner or beneficial ownership information.

⁵⁷Financial Action Task Force and the Egmont Group, *Concealment of Beneficial Ownership* (Paris, France: July 2018). According to the House of Commons Library, in 2016, the United Kingdom (UK) implemented a public registry for UK companies and has been considering implementing a registry for non-U.K. companies that want to do business there. Similarly, according to the House of Commons Library, the European Union, as part of its Fifth AML Directive, directed that member states set up a beneficial ownership registry for corporate and legal entities by January 2020 and provides that the registry be accessible to the general public.

A range of stakeholders generally support a beneficial ownership registry. For example, an FBI official testified that the lack of an obligation to collect beneficial ownership information at the time of company formation is a significant loophole that could be mitigated by additional legal requirements such as requiring companies to disclose beneficial ownership information that would be available to law enforcement and regulators.⁵⁸ Similarly, an official from the Office of the Comptroller of the Currency stated that a standard approach for the verification of beneficial ownership information would benefit law enforcement, regulators, and the financial services sector and would address some of the challenges associated with FinCEN's Customer Due Diligence rule.⁵⁹ One AML expert told us that anonymous legal entities hinder investigations, so law enforcement would benefit from the creation of a national registry that made it easier to find the true owners. This expert likened anonymous legal entities to "getaway cars" and told us a federal registry would help address the problem by unveiling those who engage in illicit activity.

On the other hand, some stakeholders have raised concerns about a beneficial ownership registry. For example, a representative from the National Federation of Independent Businesses testified that a beneficial ownership registry would be a significant new regulatory burden for small businesses due to compliance costs, difficulty understanding the regulatory requirement, and extra paperwork.⁶⁰ Specifically, there is concern that small businesses could be overwhelmed or confused by the reporting requirement. This representative testified that when the organization surveyed its members in August 2018, 80 percent of respondents opposed Congress requiring small business owners to file paperwork with Treasury reporting beneficial ownership. Similarly, the American Bar Association has expressed concern that a national

⁵⁸Senate Committee on Banking, Housing and Urban Affairs, *Combating Illicit Financing by Anonymous Shell Companies through the Collection of Beneficial Ownership Information*, 116th Cong. (2019); statement of Steven M. D'Antuono, Acting Deputy Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation.

⁵⁹Senate Committee on Banking, Housing and Urban Affairs, *Combating Illicit Financing by Anonymous Shell Companies through the Collection of Beneficial Ownership Information*, 116th Cong. (2019); testimony of Grovetta N. Gardineer, Senior Deputy Comptroller for Bank Supervision Policy and Community Affairs, Office of the Comptroller of the Currency.

⁶⁰Senate Committee on Banking, Housing, and Urban Affairs, *Outside Perspectives on the Collection of Beneficial Ownership Information*, 116th Cong. (2019); testimony of Karen Harned, Executive Director, National Federation of Independent Businesses, Small Business Legal Center.

beneficial ownership registry could create regulatory burdens on lawyers and small businesses and could undermine attorney-client privilege.

The Real Estate GTO Might Be Useful Even If a Beneficial Ownership Registry Were Created

Federal law enforcement officials and AML experts we interviewed provided several reasons why data collected through the real estate GTO still could be useful even if a beneficial ownership registry were created. First, a registry would house data on beneficial owners of legal entities but, unlike the real estate GTO data, would not link beneficial owners to real estate purchases through legal entities. According to law enforcement officials with whom we spoke, without the GTO, law enforcement agencies would have to rely on multiple sources to connect beneficial owners to real estate purchases, which could be more costly and time consuming. For example, officials from one law enforcement agency told us that the GTO still would be useful because of its flexibility (to target specific areas), thereby helping to connect suspects to specific real estate purchases. Second, a registry may not include foreign legal entities. According to DOJ officials, information on foreign legal entities can be of interest to law enforcement and can take significant time to obtain through other sources. Third, some law enforcement officials told us that the real estate GTO may have a deterrent effect on money laundering through real estate transactions, which they view as beneficial.

Having the real estate GTO (or a GTO-related rule, if warranted) and a beneficial ownership registry could create overlap. For example, having both tools could require beneficial owners to report similar information to the agency administering the registry and to FinCEN, if the beneficial owners used legal entities to purchase real estate covered by a rule. If FinCEN were responsible for the registry, it could be required to maintain and administer two separate but related databases.

Such overlap could result in greater private and government costs but also could provide complementary information.⁶¹ For instance, the Financial Action Task Force recently recommended such a multipronged approach to combat the misuse of legal entities.⁶² Under its international

⁶¹In prior work on duplication, overlap, and fragmentation, GAO has stated that there could be instances where some degree of program duplication, overlap, or fragmentation may be warranted due to the nature or magnitude of the federal effort. See GAO, *Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue*. [GAO-11-318SP](#) (Washington, D.C: Mar. 1, 2011).

⁶²Financial Action Task Force, *Best Practices on Beneficial Ownership for Legal Persons* (Paris, France: October 2019).

AML/counter-terrorist financing standards, the task force recommended that countries use one or more of its three approaches—the registry approach, company approach, and existing information approach—to collect adequate, accurate, and timely beneficial ownership information.⁶³ In its recent review, the Financial Action Task Force found that countries using only one of the approaches were less effective than countries using multiple approaches. According to the task force, the variety and availability of sources increases transparency and access to information and helps mitigate accuracy problems with particular sources.

FinCEN’s GTO May Help Inform Appropriate AML Requirements for Real Estate Industry, but Stakeholder Views Differ on Next Steps

FinCEN has yet to address key policy issues about the appropriate BSA/AML requirements for the broader real estate industry. As previously discussed, in 2003, FinCEN issued an advance notice of proposed rulemaking to solicit public comments on how to incorporate persons involved in real estate closings and settlements into the AML regime. The agency did not pursue the rulemaking further at the time. FinCEN officials said that the agency has been continuing to assess more permanent solutions regarding BSA/AML requirements for persons involved in real estate closings and settlements.

FinCEN expects the real estate GTO to help inform and address its concerns about whether other real estate businesses and professionals should be subject to AML program and reporting requirements. However, as discussed previously, FinCEN has not yet evaluated the real estate GTO to determine the next steps. Moreover, the GTOs imposed reporting requirements only on title insurance companies, and their subsidiaries and agents. As a result, the extent to which the GTO evaluation will help inform FinCEN about the appropriate BSA/AML requirements for other businesses and professionals—such as real estate agents and attorneys—is unclear.

Real estate stakeholders and AML experts with whom we spoke had mixed views on the extent to which real estate businesses or professionals should be subject to AML program and reporting requirements. For example, one AML expert told us that AML programs work best when businesses are well-positioned to collect the desired information and government can examine and, if warranted, impose fines

⁶³The Financial Action Task Force’s three approaches are (1) a registry approach that requires a company to register and maintain up to date information on the beneficial owners; (2) a company approach that requires companies to maintain and keep updated information on the beneficial owners; and (3) an existing information approach that gathers information from existing sources.

on businesses. According to the expert, because the real estate industry is large and decentralized, it is ill-equipped for these types of requirements, and the oversight and examinations by a federal regulator would be very difficult to manage across the industry. Officials from the National Association of Realtors expressed concern that because real estate agents are not involved in the financing part of a transaction, they therefore would have limited knowledge with which to identify suspicious activity. Additionally, the association expressed concern that licensing requirements related to education vary from state to state, and may not include AML as part of the educational component required for licensing.

Other industry stakeholders had different views. For example, officials from the American Land Title Association told us that FinCEN should impose AML obligations on the real estate industry, including real estate agents and attorneys, because agents and attorneys interact more closely with buyers and are more involved in the transactions than title insurers.

Conclusions

The real estate GTO highlights FinCEN's ability to use its GTO authority on its own initiative as a useful and flexible regulatory tool to combat money laundering. Through the issuance and renewal of the real estate GTO, FinCEN analyzed ways in which law enforcement agencies can and cannot leverage beneficial ownership and related information to investigate money laundering and other crimes. It also gained intelligence on the potential misuse of legal entities to launder money through real estate in different U.S. metropolitan areas, at different price points, and based on different cash-based payment options.

At the same time, the real estate GTO raised new challenges for FinCEN and revealed shortcomings in its GTO standard operating procedures. The real estate GTO was the first self-initiated GTO and has evolved into a complex order that has been in effect for years. At the time of our review, FinCEN was revising its GTO standard operating procedures but did not provide us with details about or the time frame for completing the revisions.

One of the lessons learned is the importance of planning for a self-initiated GTO that potentially would be complex and broadly scoped. FinCEN's current GTO standard operating procedures lack specific direction on oversight, outreach, and evaluations. For future self-initiated GTOs, the development of plans in these areas could provide FinCEN with greater assurance that it will be able to effectively and efficiently (1) oversee covered businesses to help ensure that they file reports when

required and in a complete, accurate, and timely manner; (2) inform and obtain feedback from law enforcement; and (3) evaluate a GTO to determine the next steps.

Recommendation for Executive Action

The Associate Director of FinCEN's Global Investigations Division should provide additional direction for self-initiated GTOs, including how the agency will plan to (1) oversee covered businesses, (2) inform and obtain feedback from appropriate law enforcement agencies, and (3) evaluate the GTOs to determine the appropriate course of action. (Recommendation 1)

Agency Comments

We provided a draft of this report to Treasury/FinCEN, the Department of Homeland Security, the Department of Justice, and IRS for review and comment. In its comments, reproduced in appendix II, FinCEN concurred with our recommendation. FinCEN and the Department of Justice also provided technical comments, which we incorporated as appropriate. The Department of Homeland Security and IRS informed us that they had no comments.

We are sending copies of this report to the appropriate congressional committees, the Secretary of the Treasury, the Attorney General, the Acting Secretary of Homeland Security, and the Commissioner of IRS. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8678 or ClementsM@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.



Michael E. Clements
Director, Financial Markets and Community Investment

Appendix I: Objectives, Scope, and Methodology

This report examines (1) the Financial Crimes Enforcement Network's (FinCEN) real estate geographic targeting order (GTO), including issuance and renewal, oversight, outreach, and evaluation; (2) federal law enforcement use of GTO reports; and (3) other tools to provide law enforcement with information about beneficial owners of legal entities.

To address the first objective, we reviewed the Bank Secrecy Act (BSA) and its implementing regulations, including the GTO provisions. To understand FinCEN's process for approving, issuing, and evaluating a GTO, we reviewed FinCEN's GTO standard operating procedures issued in 2015 and revised in 2019. We reviewed FinCEN's real estate and other GTOs and related administrative records for the real estate GTO to understand FinCEN's decision-making process and basis for issuing and renewing the GTO. The administrative records also provided information on FinCEN's preliminary findings, analysis of data from the GTO filings, and discussions with law enforcement.¹ We assessed these policies and procedures against relevant federal internal control standards.² We also reviewed prior FinCEN studies, including on the role of shell companies in financial crimes and advisories on money laundering risk in the real estate sector; the Department of the Treasury's 2018 National Money Laundering Risk Assessment and strategic plan for 2018—2022; FinCEN press releases and other notices; frequently asked questions on the GTO; and speeches and congressional testimony from FinCEN management to understand FinCEN's approach and efforts to combat money laundering in real estate.

We also analyzed documentation and data on the real estate GTO covering the period from January 2016 through May 2020, including the number of GTO reports filed by covered geographic area and number of GTO reports that identified a beneficial owner with a related suspicious activity report. Because these data are being used only to give context to the program, a full data reliability assessment was deemed unnecessary. In addition to FinCEN documents, we reviewed relevant GAO reports and academic and industry studies on the impact of the GTO on all-cash residential real estate purchases.

¹When FinCEN issues or renews a GTO, FinCEN staff prepare an administrative record for the director, which is an internal memorandum that describes, among other things, the problem to be addressed by the GTO, anticipated impact of the GTO, and scope of the GTO. The record is routed through FinCEN's senior management.

²GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

Additionally, we interviewed officials from FinCEN about their oversight, communication about, and evaluation of the GTO. To understand how law enforcement was informed about the real estate GTO, we interviewed officials from the following federal law enforcement agencies and task forces: the Drug Enforcement Administration, Department of Justice Criminal Division, Federal Bureau of Investigation, U.S. Attorney's Offices in the southern districts of Florida and New York, and the Organized Crime and Drug Enforcement Task Force in the Department of Justice; Immigration and Customs Enforcement Homeland Security Investigations and the El Dorado Task Force in the Department of Homeland Security; and the Internal Revenue Service Criminal Investigation in the Department of the Treasury. To understand how FinCEN informed and coordinated with the real estate industry about the GTO, we interviewed three industry associations—the American Land Title Association, American Escrow Association, and National Association of Realtors. We also reviewed documents and communications that these associations provided to their members on complying with the GTO reporting requirements.

To address the second objective, we reviewed studies, reports, court cases, congressional testimonies, and other materials issued by federal law enforcement agencies about their efforts to investigate and prosecute money laundering. To understand federal law enforcement's use of and views on the real estate GTO, we interviewed officials from federal law enforcement agencies identified above.

To address the third objective, we reviewed legislative proposals for creating a national beneficial ownership registry in the United States and literature documenting requirements of beneficial ownership registries created in other countries. We also interviewed a variety of stakeholders, including academics, trade associations identified above, think tanks such as the FACT Coalition and the Heritage Foundation, and experts in financial crimes and money laundering or shell companies. We reviewed information issued by the Financial Action Task Force (an inter-governmental policy-making body), including its report on professional money laundering, the 2016 Mutual Evaluation Report for the United States, international standards related to beneficial ownership, and recommended best practices for complying with such standards.

We conducted this performance audit from March 2019 to July 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our

**Appendix I: Objectives, Scope, and
Methodology**

findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Financial Crimes Enforcement Network



Financial Crimes Enforcement Network
U.S. Department of the Treasury

Office of the Director

Washington, D.C. 20220

June 22, 2020

Michael E. Clements
Director, Financial Markets and Community Investment
United States Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Mr. Clements,

Thank you for providing the Financial Crimes Enforcement Network (FinCEN) with the opportunity to review the Government Accountability Office (GAO) report, “Anti-Money Laundering, FinCEN Should Enhance Procedures for Implementing and Evaluating Geographic Targeting Orders (GAO-20-546 SU).” We support your objective to assess concerns about the potential for illicit actors to exploit regulatory gaps to launder money through the U.S. real estate market.

In 2018, we initiated a plan to increase our focus on the use and management of the USA PATRIOT Act’s Section 311 special measures, as well as FinCEN’s special collections tools, such as Geographic Targeting Orders (GTOs). This was to be accomplished by separating the former Office of Special Measures (OSM), which managed those authorities, from the Enforcement Division, and transforming it into a newly-formed Global Investigations Division (GID). These plans came to fruition in August 2019, when GID officially launched. As it stands up, GID is being given additional personnel resources, and already is re-examining and re-drafting the standard operating procedures (SOPs) for 311 actions and the use of FinCEN’s various special collections tools, including GTOs.

Given this background, we concur with Recommendation One set out in the report, which states that “[t]he Associate Director of FinCEN’s Global Investigations Division should provide additional direction for self-initiated GTOs, including how the agency will plan to (1) oversee covered businesses, (2) inform and obtain feedback from appropriate law enforcement agencies, and (3) evaluate the GTOs to determine the appropriate course of action.” GID is currently revising its GTO SOPs, which will address these additional details in their next iteration.

**Appendix II: Comments from the Financial
Crimes Enforcement Network**

We appreciate the role of the GAO in providing oversight of our programs and look forward to working with GAO in the future.

Sincerely,

/s/

Kenneth A. Blanco
Director

www.fincen.gov

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Michael E. Clements at (202) 512- 8678 or ClementsM@gao.gov

Staff Acknowledgements

In addition to the contact named above, Richard Tsuhara (Assistant Director), Rachel Siegel (Analyst in Charge), Marc Molino, Ifunanya Nwokedi, Barbara Roesmann, Kimberly Schuster, Tyler Spunaugle, and Farrah Stone made key contributions to this report.

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