

United States Senate

WASHINGTON, DC 20510

October 3, 2018

The Honorable Gene L. Dodaro
Comptroller General of the United States
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Comptroller General Dodaro:

We write to you today regarding our concerns that transnational criminal organizations and other corrupt actors may be exploiting the gaps in U.S. regulatory and law enforcement processes related to the laundering of money through the U.S. real estate market. Accordingly, we ask for your assistance with an investigation into whether vulnerabilities in anti-money laundering laws applicable to the real estate sector present increased risk of criminal activity.

As you know, the Bank Secrecy Act (BSA) and its implementing regulations generally require financial institutions to collect and retain various records of customer transactions, verify customers' identities, maintain anti-money laundering (AML) programs, and report suspicious transactions. However, the full application of the BSA is unevenly distributed across sectors of the economy. Residential real estate markets currently have fewer AML protections than lending financial institutions, presenting increased risk of access by foreign and domestic criminal organizations.

For example, although federal law requires persons involved in real estate closings and settlements to establish anti-money laundering programs, real estate professionals are not required to report suspicious transactions involving real estate purchases and sales.¹ While the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) has noted that "drug traffickers, corrupt officials, money launderers, and other criminals seek to exploit real estate transactions to hide their illicit profits, conceal their identities, and launder funds", the vulnerability of the real estate sector to money laundering is further emphasized by the following:

- The real estate industry currently has an exemption from the BSA and portions of the Money Laundering Control Act of 1986.² Currently, no mandatory reporting

¹ At a minimum these entities must: (A) develop of internal policies, procedures, and controls; (B) designate a compliance officer; (C) have an ongoing employee training program; and (D) establish an independent audit function to test programs.

² The exemption was made to exclude "persons involved in real estate closings and settlements" from Section 352 of Patriot Act , which went into effect in April 2002.

requirements are placed on, real estate funds, title insurance and escrow agents. The standard for persons involved in real estate transactions is voluntary.

- The real estate industry is currently not subject to FinCEN's Customer Due Diligence rule, which was issued to amend BSA regulations to strengthen financial institutions' vetting of customers.
- FinCEN's rule requiring covered financial institutions to identify and verify information of their *legal entity customers* at the time a new account is opened which goes into effect May 2018, does not extend to persons involved in real estate closings and settlements.

As a result, we are concerned that transnational criminal organizations and other illicit actors may seek to take advantage of any gaps in U.S. regulatory and law enforcement processes. The widespread money laundering risks posed by real estate transactions conducted without any financing (i.e., "all-cash") through the use of shell companies creates challenges for law enforcement and federal regulators seeking to safeguard the financial system from illicit use. According to the National Association of Realtors, one in four residential real estate purchases are "all-cash", totaling hundreds of billions of dollars annually nationwide.

In January 2016, FinCEN issued real estate Geographic Targeting Orders (GTOs) for several areas of the U.S. that temporarily required certain U.S. title insurance companies to identify the persons behind shell companies used to purchase high-end residential real estate, among other requirements. FinCEN has indicated that these GTOs, which have been renewed and extended several times, are temporary measures intended to help the agency, "better understand the vulnerabilities presented by the use of shell companies to engage in all-cash residential real estate transactions."


To better ensure effective and consistent AML safeguards, we are requesting an assessment of the results of the real estate GTOs, including the information provided to FinCEN and any actions taken, and how it has helped FinCEN achieve its defined objectives. Specifically, we ask GAO to address as rigorously as possible the following questions:

1. Has the information gathered by the GTOs provided useful insight about any of the above mentioned regulatory gaps or exemptions that exist regarding the BSA and the real estate industry?
2. Has the information gathered by the GTOs produced other tangible benefits, and in what ways will closing the above mentioned regulatory gaps or exemptions enhance financial market integrity in the United States?
 - a. How has FinCEN used the information collected from the real estate GTOs to inform its ongoing efforts to address money laundering vulnerabilities?
 - b. Has the information gathered by the GTOs improved the ability of FinCen, DOJ, the FBI and other law enforcement agencies to prevent money laundering in the real estate industry?

- c. Based on the information it has collected from these GTOs, is FinCEN considering any regulatory changes?
3. Are there ways to improve upon the information gathered by the GTOs to make FinCEN more effective in the fight against money laundering?
 - a. Are there any gaps or loopholes that exist in the design of the GTO program that could be exploited by illicit actors, such as the beneficial ownership thresholds³ or limiting the GTO to title insurance companies?
 - b. Are there any unintended consequences from targeting specific geographic regions while leaving other areas uncovered? The adaptive nature of illicit actors raises concerns they may shift their real estate activities from GTO areas to other regions of the United States.
4. Lastly, we ask that GAO identify any additional vulnerabilities and gaps in the current BSA framework, specifically as they pertain to the real estate sector, and how they might be addressed through regulatory or legislative action.

Thank you for your prompt attention to this request.

Sincerely,



Chris Van Hollen
United States Senator



Sheldon Whitehouse
United States Senator

³ Experts have raised issues with the GTOs requiring beneficial ownership information for those with 25% or greater ownership interest in an LLC and have concerns that illicit actors seeking to launder money can creatively work around the threshold.