

NAR Committee:

Business Issues Policy Committee

What is the fundamental issue?

Real estate professionals should understand their responsibilities in the current efforts being made to combat money laundering.

I am a real estate professional. What does this mean for my business?

The USA PATRIOT Act, the Bank Secrecy Act, and Executive Order 13224 have increased the level of the government's scrutiny of financial transactions in an effort to prevent money laundering and block the financial dealings of terrorists. Under the USA PATRIOT Act, financial institutions are required to create anti-money laundering (AML) and customer identification programs. The Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and individuals. OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries collectively called Specially Designated Nationals (SDNs).

The laws impose the following duties on real estate professionals:

1. Real estate brokers and agents must report, using IRS form 8300, any single or series of related transactions in which they receive cash in excess of \$10,000.
2. SDN assets are blocked, and all businesses (including real estate agents and brokers) have a responsibility to ensure that they are not dealing with any SDN by checking the list provided by OFAC. The SDN list can be found at: www.treasury.gov/sdn.

At this time, real estate firms and professionals engaged in brokerage or property management activities are not required to implement formal anti-money laundering or anti-terrorist financing (AML/TF) programs, as do regulated financial institutions. However, the U.S. Department of Treasury has the authority to change this and expand coverage of these requirements. To date, the Department of Treasury implements a risk-based analysis approach, focusing regulation on high-risk entities such as financial institutions rather than non-financial professions.

In 2017, the Financial Crimes Enforcement Network (FinCEN), Treasury's lead agency on AML/TF requirements, issued an [Advisory to Financial Institutions and Real Estate Firms and Professionals](#) to provide information on money laundering risks for real estate transactions. The Advisory provides examples of money laundering in the real estate sector, how shell companies and all-cash purchases may be linked to illicit activity, and ways in which real estate professionals' can voluntarily file suspicious activity reports. FinCEN also continues tracking data reported by title companies involved in certain high-end real estate

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transactions through [Geographic Targeting Orders \(GTOs\)](#).

NAR Policy:

NAR supports continued efforts to combat money laundering and the financing of terrorism through the regulation of entities using a risk-based analysis. Any risk-based assessment would likely find very little risk of money laundering involving real estate agents or brokers. Regulations that would require real estate agents and brokers to adopt anti-money laundering programs would prove burdensome and unnecessary given the existing AML/TF regulations that already apply to United States financial institutions.

As anonymous shell companies are increasingly being used by corrupt foreign and domestic interests to launder money via real estate purchases, the lack of identification of “beneficial owners” of these companies has also created obstacles for law enforcement agencies’ enforcement of AML laws. NAR therefore supports the disclosure of beneficial ownership of business entities at the time those entities are registered with the states, with appropriate consideration given to address legitimate business privacy concerns. Allowing law enforcement to have access to such information will improve tracking of illicit money laundering schemes, and also reduce growing pressures to impose bank-like AML responsibilities on real estate professionals.

Opposition Arguments:

Some believe that real estate agents and brokers should be required to have specific anti-money laundering plans and procedures in place. NAR believes that such requirements would be overly burdensome compared to the risks. NAR worked with the Department of the Treasury to develop suggested voluntary guidelines for real estate professionals to follow to be on guard for possible money laundering situations and how to report those situations.

Legislative/Regulatory Status/Outlook

Congress is focusing on the lack of collection of beneficial ownership information that has allowed anonymous shell companies to fund corrupt domestic and foreign interests, such as laundering money through real estate purchases. To address this issue, legislation will likely be introduced this session that would require disclosure of the beneficial owners of a corporation or limited liability companies (LLC) upon creation to prohibit a shell company from masking the actual ownership interests. In the past, there have been several bipartisan legislative measures in the House and the Senate that would require beneficial ownership information to be reported to law enforcement agencies, like FinCEN - the information would not be publicly available - and would impose no requirements on real estate professionals. For example, state registered corporations or LLCs may be required to report specific information about their beneficial owners to FinCEN.

Other current legislative proposals include expanding the Geographic Target Orders (GTOs) to include commercial, all-cash real estate transactions and making GTOs permanent. This proposal would require title companies to report to FinCEN on all-cash commercial transactions. It is currently unclear if the GTOs are

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expanded to include commercial transactions whether the threshold amount for reporting will follow the current GTO and remain at \$300k, similar to reporting for residential real estate transactions, or whether the amount will be increased. A separate legislative proposal would make GTOs permanent, eliminating the need for FinCEN to extend the orders every six months under the current framework. There are still many questions regarding the scope and implementation of these proposals, if passed by Congress.

NAR continues to monitor closely and has worked with FinCEN to develop educational materials informing real estate agents and brokers of their responsibilities under current law. The Association of Real Estate Licensing Law Officials (ARELLO) also shares NAR's resources on anti-money laundering practices, which are distributed by many state real estate offices.

In early 2016, FinCEN began to issue Geographic Targeting Orders (GTOs), imposing new data collection and reporting requirements on specific title companies involved in certain high-end real estate transactions. These GTOs required title companies to identify natural persons with 25 percent or greater ownership interest in a legal entity making an all cash real estate purchase. The first GTOs were specifically directed at all cash real estate purchases in excess of \$3 million dollars and \$1 million dollars in the Borough of Manhattan in New York and Miami-Dade County, Florida, respectively.

FinCEN discovered that a significant portion of the reported covered transactions in the GTOs were linked to possible criminal activity by the individuals revealed to be the beneficial owners of the shell company purchasers. As a result, FinCEN has continued expanding and extending the covered geographic areas where title companies must comply with the GTO's data collection and reporting requirements. The [latest GTO](#), effective April 19, 2024, through October 15, 2024, requires title companies to continue to collect and report information involving persons engaged in residential real estate transactions of \$300,000 or more made without a bank loan or other similar financing, and \$50,000 in the greater Baltimore region. FinCEN renewed the GTOs in the current states California, Colorado, Connecticut, Florida, Hawaii, Illinois, Maryland, Massachusetts, Nevada, New York, Texas, Washington, Virginia, and the District of Columbia.

In accordance with the GTOs, title companies, and their agents, must file a report with FinCEN regarding covered purchases of residential real property meeting the requirements above when such purchases are made without a bank loan or similar external financing and is paid at least in part by using currency or a cashier's check, a certified check, a traveler's check, a personal check, a business check, or a money order. Pursuant to legislation that directed Treasury to allow investigators to obtain additional records to better target illicit Russian activity, the GTOs also include wire funds transfers.

The GTOs do not impose any new obligations on real estate professionals. However, it is important for members to be aware of these and the potential impact on real estate sales transactions. In the event a transaction is covered by a GTO, the title company may consult with the real estate professional to obtain information necessary to report in compliance with the order. Such communications should not affect the real estate sales transaction or timeline for closing as title companies are required to report GTO covered transactions to FinCEN within 30 days of the closing.

For more information, visit [NAR's Issue Brief](#) on the Geographic Targeting Orders (GTOs).

Current Legislation/Regulation (bill number or regulation)

[Global Targeting Orders \(GTOs\)](#)

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