



To: All Policy Issuing Agents of WFG National Title Insurance Company
From: Underwriting Department
Date: August 26, 2016
Bulletin No. FL 2016-10
Subject: FINCEN expands Geographic Targeting orders

On February 16, 2016, the U.S. Department of the Treasury – FinCEN issued a series of Geographic Targeting Orders (GTO) applicable to the four largest title insurers their subsidiaries and agents. On July 22, FinCEN issued a new GTO applicable to all title insurers, including WFG, their subsidiaries and agents. The GTO requires the reporting of very detailed information about the ultimate owners of entities purchasing real property if certain conditions are met.

The GTO is binding on EVERY agent of WFG and ALL of the agents of every other title insurer. The GTO is backed by criminal and civil penalties. So compliance by all of us is important.

The Key Points of the New GTO:

Although we’ve summarized it here, we would refer you to the actual text of the GTO and the FinCEN FAQ for all of the details and nuances of the order.

- The GTO becomes effective for any transaction closing on or after August 28, 2016 for a period of six months through February 23, 2017– we expect it will be renewed continuously after that.
- Each named title insurer (including WFG), its subsidiaries and AGENTS is required to submit FinCEN form 8300 if the transaction meets ALL of the following criteria (defined as a “Covered Transaction”):
 - A legal entity is the purchaser – this includes any corporation, limited liability company, partnership or other similar business entity.
 - The purchase is of Residential real property (including individual units of a condominium or cooperative) designed principally for the occupancy of from one to four families.
 - The sale meets one of the following the criteria for location and minimum purchase price:

- a total purchase price of \$500,000 or more in Bexar County, Texas
 - a total purchase price of \$1,000,000 or more in Miami-Dade, Broward or Palm Beach Counties, Florida.
 - a total purchase price of \$1,500,000 or more in the Boroughs of Brooklyn, Queens, Bronx, Staten Island, New York City, NY.
 - a total purchase price of \$2,000,000 or more in San Diego, Los Angeles, San Francisco, San Mateo or Santa Clara Counties, California.
 - a total purchase price of \$3,000,000 or more in the Borough of Manhattan, New York City, NY.
- The purchase is made without a bank loan or similar form of external financing; and

NOTE: In conversations with FinCEN, they clarified that the “similar forms of external financing” meant loans from lenders required to have an Anti-Money Laundering Program.

A review of [31 CFR §§1010.100 and 1029.210](#) indicates that all Loan or Finance Companies (as defined), including residential mortgage lenders and originators are required to have such Anti-money laundering programs. Any federally insured bank or credit union or entity or individual lender with a valid Nationwide Mortgage Licensing System and Registry, (NMLS) ID number should fall within the categories required to have anti-money laundering programs.

So an NMLS number on the 5th Page of your Closing Disclosure is a reasonable assurance that the loan does not require reporting under the GTO

NOTE: Seller financing does not exempt a transaction from reporting requirements.

- Some part of the purchase is made using currency, a cashier’s check, a certified check, a traveler’s check, a personal check, a business check, or a money order in any form.

CAUTION: There is no “small amount” exception in FinCEN requirements. Any portion of a cash transaction paid by cash or check – including an earnest money deposit delivered to a real estate agent – may trigger the reporting requirement.

If you don't meet ALL of these criteria, no filing is required – however you should still save the records indicating that the criteria were met for at least five years.

- Records must be retained and made available to FinCEN, law enforcement and other regulatory agencies for a period of five years from the last day the GTO is effective (including any renewals of the GTO).
- A Form 8300 must be e-filed through the Bank Secrecy Act E-Filing System within 30 days following the closing of the Covered Transaction.

What to Do

1. If in working up a transaction, it appears that a transaction is of a size and in a county where it MIGHT require reporting:
 - a. the following requirement should be included in any WFG title insurance commitment issued:

If the proposed insured purchase is in a transaction ultimately determined to require the filing of a report under the FinCEN Geographic Targeting Order (“GTO”) dated July 22, 2016, then the title agent must: (1) comply with the reporting requirement of the GTO and file Form 8300 directly with FinCEN; (2) obtain an “Affidavit In Connection with FinCEN Geographic Targeting Order” from the entity representative on a form provided by or acceptable to the Company; (3) obtain certifications from other parties who may have acted as conduits of any portion of the purchase price; and (4) obtain copies of the driver’s license, passport or other similar identifying documentation of the entity representative and of each beneficial owner of 25% or more of the purchaser entity.

No policy will be issued to any purchaser which does not provide all information necessary to file all required FinCEN forms.

- b. This requirement may be deleted by the agent if it determines that the transaction is not a “Covered Transaction” as defined in the GTO -- perhaps because it involves commercial property, is financed by a bank loan, ALL funds are received by wire transfer or it otherwise is not a “Covered Transaction.”
2. Plan ahead to capture the required information. You may face objections because this is a new requirement, and gathering NPI regarding the beneficial owners of an entity who are not signatories will be perceived by some as an invasion of privacy. It is important to start the discussion early as to any transaction that might ultimately require reporting.
 - a. A sample explanation sheet for real estate agents is attached. Feel free to adapt and brand it for your own company.
 - b. A data capture form is attached to this bulletin for your convenience.

- c. If an outside party is handling the settlement, such as an independent escrow company, settlement company, or law firm, you may not have the information necessary to determine whether a filing is required – but that doesn't relieve you of the obligation to file where required, so coordination with and certifications from the party handling settlement will be required.
 - d. If others handled part of the purchase price, such as the earnest money deposit, certifications will be required from them as well.
3. If the transaction develops such that reporting is required, a third party should certify the accuracy of the information to you. FinCEN's Frequently Asked Questions, state that you may "reasonably rely on information provided to [you] by third parties involved in the Covered Transaction, including the Purchaser or its representatives...."
 - a. We require that the party signing on behalf of the purchasing entity to provide most of the information for the Form 8300, with the real estate agent and other recipients of any portion of the earnest money deposit or purchase price to certify only as to the manner in which they received funds.
 - b. A sample affidavit and certifications are attached.
4. Within 30 days following closing of the transaction, the Form 8300 must be filed electronically through the Bank Secrecy Act E-filing system.

NOTE: When filling out the Form 8300, the IRS [instructions](#) and [reference guide](#) for completing the form were partially superseded by the specific instructions of the GTO. In case of conflict the GTO instructions are to be followed.

NOTE 2: The attached sample Form 8300 is the paper version, it will look slightly different on the online electronic filing

5. At the time of filing with FinCEN, copies of the following should be forwarded to WFG:
 - a. Form 8300 as filed with FinCEN;
 - b. The completed Affidavit In Connection With FinCEN Geographic Targeting Order;
 - c. Any third party certifications – real estate agent, other title company, independent escrow company, settlement company, law firm, etc.
 - d. A copy of the Owner's Policy issued.

These should be sent by encrypted email to FINCENcopies@WFGnationaltitle.com and are separate from your normal policy remittance.

6. In the near future, we will be simplifying and automating some of these processes for your convenience.

Setting Up for E-Filing

To set up on the Bank Secrecy Act E-filing System:

1. Go to <http://bsaefiling.fincen.treas.gov/main.html>
2. Review "Getting Started"

3. Fill out a Supervisory User Application Form
4. Assign the supervisory user to represent your business.
5. Obtain a digital certificate
6. Register on the system

If a party declines to provide the required information on a covered transaction, you are NOT to issue the title insurance policy without written authorization from WFG's Underwriting Department.

The GTO is an obligation of each WFG agent, backed by criminal and civil penalties. So following these rules is important.

Attachments:

- [Geographic Targeting Order](#)
- [FinCEN Frequently Asked Questions](#)
- [Sample Data Capture Form](#)
- [Sample Affidavit from Purchaser Rep](#)
- [Certification for Transferred Deposit](#)
- [Certification for Party Handling Settlement](#)
- [Sample Information Sheet for real estate agents](#)
- [Sample of completed Form 8300](#)
- the IRS [instructions](#) and [reference guide](#)

NOTE: This Bulletin is for the sole purpose of establishing underwriting positions and policies reflecting WFG National Title Insurance Company's best business judgment. The information contained in this Bulletin is intended solely for the use of employees of WFG National Title Insurance Company, its title insurance agents and approved attorneys. Disclosure to any other person is expressly prohibited unless approved in writing by the WFG National Title Insurance Company's Underwriting Department.

The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.