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FinCEN Issues Second South Florida GTO in Less Than Three Months

Today, the Financial Crimes Enforcement Network (FinCEN), working in conjunction with U.S. Internal Revenue Service – Criminal Investigation (IRS-CI) and the United States Attorney’s Office for the Southern District of Florida, issued a Geographic Targeting Order (GTO) for Miami-Dade and Broward counties. The GTO applies to check cashing business and requires check cashers to keep certain records in connection with the cashing of certain federal tax refund checks. In issuing the GTO, FinCEN explained the GTO was aimed at combating stolen identify tax refund fraud.

This GTO follows an unrelated GTO issued just three months earlier by FinCEN for certain ZIP codes within Miami-Dade County. This GTO is yet another stark reminder of law enforcement’s continued aggressive approach to anti-money laundering in South Florida and raises the possibility that additional GTOs may be forthcoming.

The GTO becomes effective Aug. 3, 2015, and is scheduled to terminate Jan. 30, 2016. The order covers all check cashing businesses in Miami-Dade County and Broward County, including those businesses that simply maintain a location, including a branch or agent location, in Miami-Dade or Broward counties. The express terms of the GTO, however, only require the additional record keeping for transactions that occur within Miami-Dade and Broward counties.

A check casher is a term defined by federal regulation and generally includes a business or person that accepts checks, monetary instruments, travelers checks, negotiable instruments that are either in bearer form, endorsed without restriction, made out to a fictitious payee or otherwise in such form that title thereto passes upon delivery, or incomplete instruments signed but with no payee identified, in return for currency or a combination of currency and other monetary instruments or other instruments, in an amount greater than \$1,000 for any person on any day in one or more transactions. Whether one is a check casher is dependent on the facts and circumstances and generally does not include a person that solely accepts monetary instruments as payment for goods or services other than check cashing services; a person that engages in check cashing for the verified maker of the check who is a customer otherwise buying goods and services; a person that redeems its own checks; or a person that only holds a customer's check as collateral for

repayment by the customer of a loan.

The GTO's additional record keeping requirements only apply to transactions that involve the cashing of a Federal tax refund check in excess of \$1,000. The GTO defines a Federal tax refund check as (i) a U.S. treasury check used to pay a tax refund or (ii) a check issued by a third party in connection with an anticipated Federal tax refund.

With regard to the additional records that must be collected, the GTO requires that check cashers obtain the customer's telephone number; a copy of the customer's identification documents issued in the same name as the of the payee on the check; a clear original thumbprint of the customer that is recorded on the check; and a clear digital photograph of the customer taken at the time the check is cashed and that matches the photograph in the identification document. In addition, these records must be retained for five years from Jan. 30, 2016, and must be made available to any law enforcement or regulatory agency, upon request.

Failure to comply with the GTO can result in civil or criminal penalties. For check cashers that do business in South Florida, today's GTO poses new, albeit temporary, compliance requirements and will necessarily require revisiting any existing compliance program. In addition, depository institutions that provide banking services to such check cashers should conduct heightened due diligence with respect to these check cashers for suspicious activity, at least until the GTO terminates.

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