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Filling Gaps: Defending American Security from Kremlin Aggression Act of 2019 Would Expand Use of Geographic Targeting Orders

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"Sanctions Bill from Hell" Targets Real Estate Deals

On February 13, 2019, Sen. Lindsay Graham (R – S.C.) introduced S.482 – the Defending American Security from Kremlin Aggression Act of 2019 ("DASKAA"), a bill intended "[t]o strengthen the North Atlantic Treaty Organization, to combat international cybercrime, and to impose additional sanctions with respect to the Russian Federation and for other purposes." DASKAA was introduced by a bipartisan coalition of Senators and is a revision to a similar bill that was introduced but stalled in the Senate in 2018.

Like its previous iteration, dubbed by its authors as the "sanctions bill from hell,"DASKAA would implement a litany of measures meant to punish Russia for its interference in the 2016 presidential election and to combat future aggression, including the development of chemical weapons, cybercrime, election interference and, importantly for our purposes, money laundering. Russian officials have denounced the bill, referring to the proposed sanctions as "insane", "reckless", and amounting to "racketeering." Whether DASKAA can reach the Senate floor, let alone achieve passage through both Houses of Congress and gain the signature of the President (whose son has observed publically that "Russians make up a pretty disproportionate cross-section of a lot of our assets"), is as uncertain as the sources of Russian money flowing through the American economy. What is clear, however, is that neither the means by which Russia seeks to interfere with, exploit and influence America and the American economy, nor legislators' willingness to keep a light on those efforts and develop measures to counter them, are going away. One example is DASKAA's codification and expansion of the current use of Geographic Targeting Orders ("GTOs") to combat money laundering through real estate transactions.

As we have blogged (here, here, here, and here, among other posts), Russia is no stranger to money laundering. And real estate transactions can offer a profitable and frequently opaque method for converting illicit funds into "clean" cash and, oftentimes, revenue-producing assets. Of course, as we also have blogged (here and here among other posts), Russian actors are far from alone in exploiting the real estate industry to channel ill-gotten wealth to the West.

Interestingly, a current report details how the emergence of American real estate (alongside London

real estate) as a significant vehicle for foreign money laundering can in many ways be traced back to the collapse of the Soviet Union and emergence of the Russian Federation. As former CIA Moscow Station Chief Richard Palmer once testified to Congress, the collapse of the Soviet Union coincided with the emergence of globalization, resulting in a then-new interconnectedness of the world's economies. Money began flowing across borders more freely at the same time that Russian elites – including Russia's then-Prime Minister Vladimir Putin – began amassing fortunes by plundering the former Soviet state treasury. Western economies became the channel by which this loot flowed out of Russia and Western institutions largely welcomed the new business. Although the Clinton administration pushed tough anti-money laundering laws in response to the mounting evidence of foreign money laundering through the American economy, those efforts languished until passage of the USA Patriot Act under President George W. Bush in October 2001. Of course, Title III of the Patriot Act is the International Money Laundering Abatement and Anti-terrorist Financing Act, which forms the backbone of the nation's efforts to prevent, detect and prosecute money laundering, including setting forth most of the reporting and record-keeping requirements upon which FinCEN, the IRS and other law enforcement bodies rely to detect and prosecute money laundering today.

Although the Bank Secrecy Act ("BSA") broadly includes "persons involved in real estate closings and settlements" within its definition of a "financial institution" covered by the BSA, FinCEN to date has not issued regulations regarding real estate brokers, escrow agents, title insurers, and other real estate professionals from its provisions (and has issued regulations which currently narrow the definition of a "loan or finance company" covered by the BSA to only certain nonbank residential mortgage lenders and originators). Thus, while the Patriot Act attempted to close many money laundering windows, it left swinging ajar a significant and lucrative door to pass money through: high-end real estate. Buyers could (and have to a staggering extent) acquire high-end real estate in all cash transactions through anonymous shell companies. The result, according to recent analysis is that money laundering through the real estate industry has topped **$1.6 trillion**.

In an effort to fill the real estate gap left in the anti-money laundering provisions of the Patriot Act, the Obama Administration began issuing through FinCEN GTOs in January 2016. The first iteration of the GTO program was narrow and targeted and required certain title insurers to identify the true beneficial owner behind any legal entity acquiring in cash real estate in Manhattan for over $3,000,000 or in Miami-Dade County for over $1,000,000. The GTOs have 180 day limits and thus require biannual renewal. And FinCen consistently has renewed them in the years since, expanding the program in several instances. In July 2016, FinCen expanded the geographic scope of the GTO to include, in addition to Miami-Dade County and Manhattan: Bexar County, Texas ($500,000 financial threshold); Palm Beach, Fl ($1,000,000 financial threshold); Brooklyn, Queens, Bronx and Staten Island, NY ($1,500,000 financial threshold); and San Diego, Los Angeles, San Francisco, San Mateo, and Santa Clara, CA ($2,000,000 financial threshold).

The GTO was renewed again in February 2017 and again in August 2017, adding Honolulu, Hawaii ($3,000,000 financial threshold) to its scope and including transactions involving wire transfers. In March 2018, FinCEn again extended the GTO (without issuing a press release). In November 2018, FinCen renewed and greatly expanded the scope of the GTO. Under the November 2018 GTO, the financial threshold was reduced to only $300,000 for transactions in all covered geographic areas. And, the geographic scope was expanded, as well, to include: Dallas, TX; Clark County, NV; King County, WA; Suffolk and Middlesex County, MA; and Cook County, Ill. The November 2018 GTO also covers transactions using virtual currency.

Now, through DASKAA, Congress is attempting to codify and expand the GTOs. Under DASKAA, title insurance companies would be required to "obtain, maintain, and report to the Secretary

information on the beneficial owners of entities that purchase residential real estate in high-value transactions in which the domestic title insurance company is involved." "Beneficial Owner" is defined to include any individual or entity who directly or indirectly owns 25% or more of a purchasing entity. FinCEN would be required under the bill to prescribe implementing regulations within 90 days of enactment, which would include establishing a monetary threshold for covered transactions "based on the real estate market in which the transaction takes place."

In essence, DASKAA would make the GTOs permanent and expand them nationwide. Ultimately, the likelihood of DASKAA becoming law is unclear. It is a certainty, however, that illicit funds will continue flowing into the real estate market from Russia and elsewhere. This fact is not lost on the United States government.

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