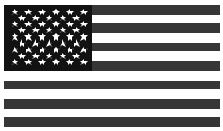
The USA PATRIOT Act and Executive Order 13224



The War on Terrorism

- Regulatory Response to Attacks of 9/11
- Goal: Restrict terrorist groups' access to financial resources.
- 2 Key Components:
  - The USA PATRIOT Act of 2001
  - Executive Order 13224

The USA PATRIOT Act of 2001

- "**U**niting and **S**trengthening **A**merica by **P**roviding **A**ppropriate **T**ools **R**equired to **I**ntercept and **O**bstruct **T**errorism"
- Signed into law on October 26, 2001

Purposes of the Act

- Increase information sharing to law enforcement agencies
- Provide for record keeping and reporting among financial institutions
- Provide compliance programs within various financial industries

Key Features of the Act

- Key Features Affecting U.S. Businesses:
  - Anti-Money Laundering Programs
  - Verification of Customer Identification Programs
  - Cooperation and Information Sharing with the Government
- Implemented by Treasury Regulations due by April 24, 2002

Anti-Money Laundering Programs

- Applicable to "financial institutions" as the term is defined by the Bank Secrecy Act
- Definition includes traditional financial institutions such as banks, credit unions, and savings associations
- Definition also includes non-traditional financial institutions including . . .

Non-traditional Financial Institutions

- *Persons engaged in real estate closings and settlements*
- *Loan or finance companies*
- *Private bankers*
- *Insurance companies*
- *Travel Agencies*
- *Sellers of Vehicles*
- *Investment Companies*

Interim Treasury Regulations

- April 29, 2002 - Interim Final Regulations ("IFR's") issued by the Department of the Treasury.
- Affected financial institutions include:
  - Banks, Credit Unions, Savings Associations, Money Services Businesses, Registered Securities Broker-Dealers, Futures Commissions Merchants, Credit Card System Operators, Mutual Funds, and Casinos

Temporarily Exempted

- "Other" financial institutions temporarily exempted from compliance with the Act
- Regulations for all financial institutions were due by October 25, 2002
- Treasury expected to issue regulations by April 2003
- Deadline for issuing regulations extended indefinitely
- Proposed rules issued May 5, 2003 for Commodity Trading Advisers and Investment Advisers requiring them to adopt anti-money laundering programs

Problems with Regulation

- Most "other" financial institutions have never been defined for purposes of the Bank Secrecy Act
- E.g. - "Dealers in precious metals, stones, or jewels" or "Persons engaged in real estate closings and settlements"
- Temporary exemptions granted so Treasury can study these other industries

Anti-Money Laundering Requirements

- Anti-money laundering programs must include, at a minimum:
  - Internal policies, procedures and controls
  - A designated compliance officer
  - An ongoing employee training program
  - An independent audit function to test the program

Compliance Requirements

- Previously regulated industries must maintain compliance with existing regs.
- Not-previously regulated industries must adopt risk-based programs (*i.e.* programs commensurate with the risks posed by the services offered in light of the nature and volume, and location and size of the company)

Real Estate Closings and Settlements

- April 10, 2003 – Dept. of Treasury requested public comment on how to define and regulate "Persons engaged in real estate closings and settlements."
- June 9, 2003 – Real Property, Probate, and Trust Law Section of the ABA ("RPPT") issued a response to Dept. of Treasury request for public comment.

Real Estate Closings and Settlements

- RPPT stated that the commercial real estate industry does not pose a significant enough money-laundering threat to warrant the imposition of federally regulated anti-money laundering regime and urged the Dept. of Treasury to conduct further studies.
- RPPT requested that the Dept. of Treasury narrowly define the phrase "Persons engaged in real estate closings and settlements" to avoid including transactions that do not fit within the ordinary meaning of that phrase. E.g. – condominium declarations, management agreements, listing agreements, and easements.

Real Estate Closings and Settlements

- RPPT also suggested that:
  - The imposition of AML requirements should be based on the roles that various participants take in a given real estate transaction and only attorneys that act as financial intermediaries should be required to adopt AML programs.
  - The Dept. of Treasury should consider other factors such as costs of implementation before imposing AML requirements.

Cooperation and Information Sharing

- Final rule issued by Financial Crimes Enforcement Network ("FinCEN")
- Allows FinCEN on behalf of other law enforcement agencies to require all financial institutions to search records and divulge information relating to accounts or transactions with suspected individuals.

Cooperation and Information Sharing

- Includes employee records as well as customer records
- Definition of "financial institution" is the same as anti-money laundering provisions of the Act
- No financial institutions exempted from coverage of this section

Recommendations for Clients

- Upon a request by FinCEN take the following steps:
  - Document the request and information provided
  - If emergency requests, get confirmation later from FinCEN that provision of information was in response to a request
  - Confirm ID of requesting party - official capacity
  - Get a receipt for documents provided

Additional Provisions

- Enhanced due diligence to detect money laundering through foreign financial institution correspondent accounts
- Enhanced due diligence for accounts maintained for “private banking” accounts or clients

Penalties for Violation of the Act

- Businesses: Assets can be frozen or fines of up to $1,000,000 per violation
- Individuals: Fines of up to $500,000 or twenty years imprisonment
- Injunctive relief to prevent future violations
- Possible tort liability

Penalties for Violations of the Act

- Businesses: Assets can be frozen or fines of up to $1,000,000 per violation
- Individuals: Fines of up to $500,000 or twenty years imprisonment
- Injunctive relief to prevent future violations

Executive Order 13224

- Incorporates a list of Specially Designated Nationals and Blocked Persons (the "SDN List") maintained by OFAC
- Section 1 - blocks all property and interests in property of those on the SDN List
- Section 2 - prohibits all transactions or dealings by U.S. persons or within the U.S. with those on the SDN List

Penalties for Violating the Executive Order

- Businesses: Assets frozen and up to $500,000 per violation
- Individuals: Fines of up to $250,000 and ten years imprisonment

For More Information

- The SDN List and updates regarding the USA PATRIOT Act and implementation of regulations can be obtained by visiting the Department of the Treasury website at: http:www.ustreas.gov