

## **Patriot Act Fact Sheet: *What Real Estate Professionals need to know***

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### **Overview:**

- At this time real estate professionals engaged in brokerage or property management activities and their real estate firms are not financial institutions and do not need to implement anti money laundering programs.
  - Financial institutions, as a matter of course, must implement a customer identification program and may ask a real estate professional's client for personal information to complete a financial transaction.
  - Commercial property managers, as well as other real estate practitioners, do not need to implement a Customer Identification Program (CIP), but should periodically check Treasury's list of Specially Designated Nationals and Blocked Persons (SDN) list to ensure that current and prospective tenants are not on the list.
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### **Issue:**

The passage of the USA PATRIOT Act and the issuance of Executive Order 13224 have increased the level of the government's scrutiny of financial transactions in an effort to isolate and block the financial dealings of terrorists and terrorist affiliated. While every business has a responsibility to be vigilant in ensuring that they are not dealing with a restricted entity, it falls squarely on the financial institutions to actively screen their customers for any links to restricted entities by creating a CIP and an Anti-Money Laundering Program.

### **Key Federal Entities:**

FinCEN: Financial Crimes Enforcement Network, housed in the Treasury Department, supports domestic and international law enforcement efforts to combat money laundering and other financial crimes. FinCEN is the entity that monitors CIP compliance.

OFAC: Office of Foreign Asset Control (OFAC), housed in the Treasury Department, maintains the list of Specially Designated Nationals and Blocked Persons (SDN). OFAC also monitors compliance with executive order 13224 that prohibits US entities from entering into business transactions with SDN entities. The industries for which OFAC has established clear compliance guidelines are: insurance, import/export, tourism, securities and banks.

### **What does this mean for real estate professionals?**

Money Laundering/Customer Identification Programs: As of October 1, 2003, all *financial institutions* must implement a CIP. Financial Institutions, as defined by the Treasury Department, are those institutions that are regulated by:

- The Treasury Department
  - Office of the Comptroller of the Currency
  - Office of Thrift Supervision

- Federal Reserve System
- Federal Deposit Insurance Corporation
- National Credit Union Administration

Financial institutions also include all private banks, credit unions, and trust companies that do not have a federal regulator.

In addition, the Bank Secrecy Act includes “persons involved in real estate settlements and closings” in its definition of Financial Institutions. **The Treasury Department issued an advanced notice of proposed rule making in April 2003 seeking comment about the nature of the anti-money laundering program requirements that should apply to “Persons involved in Real Estate Closings and Settlements,” and the persons to whom those requirements should apply. NAR stated, in a comment letter to FinCEN, that NAR supported efforts to combat money laundering, but expressed concerns that additional regulations on real estate brokerages might be burdensome and unnecessary without further justification from the federal agencies as to why current local, state, and federal money laundering rules are insufficient. The comment period ended on June 9<sup>th</sup>, 2003. No decision has been made yet on when or whether proposed rules will be issued.**

For CIP purposes and other purposes, it appears that real estate professionals engaged in brokerage or property management activities and their real estate firms are *not* financial institutions, and not required to implement anti-money laundering or CIP efforts.

As of October 1, 2003 Financial Institutions must implement a CIP that includes:

- Collect identifying information about customer's opening an account.
- Verify that the customers are who they say they are
- Maintain records used to verify their identity
- Determine whether the customer appears on any list of suspected terrorists or terrorist organizations.

Because of their duty to satisfy CIP requirements, financial institutions may ask a customer or client for personal information, such as a social security number or other identifying information, to verify the person’s identity.

In instances where a real estate professional acts only as an intermediary between the customer and the financial institution, by, for example, facilitating the creation of an escrow or using the escrow to close a transactions, it appears that the responsibility falls on the bank with which the customer and real estate professional interacts to verify a customer’s identity or otherwise satisfy CIP requirements.

### **Real Estate Transactions and USA PATRIOT Act Compliance**

The PATRIOT Act also prohibits transactions with certain entities. Even though real estate professionals in the U.S. and their firms are not “financial institutions” for CIP or OFAC purposes, they, as well as their clients and customers, are subject to OFAC jurisdiction and are prohibited from engaging in any transactions involving blocked property and from providing any

service benefiting any person or entity on the OFAC maintained master list of "Specially Designated Nationals and Blocked Persons" ("SDN List"), regardless of where in the world they are located. All real estate professionals should be aware of the sanctions programs administered by OFAC and their obligation to comply with OFAC regulations. Any professional whose practice involves transactions with foreigners or foreign properties should be particularly aware of who he or she is dealing with.

OFAC Compliance: OFAC has not adopted specific due diligence procedures or other guidelines for compliance by real estate professionals (like those for banks, the securities industry, insurance companies, tourism, and exporters/importers). However, the American Land Title Association in an article in *Title News* discussing OFAC compliance for real estate professionals, suggests the following in regard to OFAC compliance:

1. Compliance should involve scanning customer lists against the SDN List on a regular basis for matches. The updated and current SDN List is readily available at OFAC's website (<http://www.treas.gov/ofac>). Many private companies offer specific OFAC compliance consulting and special software to help companies scan customer lists for matches.
2. Any matches should be confirmed to be sure that are not "false positives" before contacting the OFAC Compliance Hotline. Evaluate the quality of the match by examining how closely the information matches the entry on the SDN List, including address, date of birth, and identification numbers, if any.
3. If there is a valid match, the professional should contact OFAC's Compliance Hotline at (800) 540-6322 for further guidance.