

Understanding Title III of the "USA Patriot Act"



*"United and Strengthening America by Providing Appropriate
Tools Required to Intercept and Obstruct Terrorism Act of
2001"*

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USA Patriot Act



⌘ HR 3162:

☑ The "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001" or "USA Patriot Act" or "Act"

☒ Enacted October 26, 2001.

⌘ Most comprehensive AML legislation since 1970 Bank Secrecy Act.

☑ Money Laundering Control Act of 1986, Annunzio-Wylie Anti-Money Laundering of 1992.

Title III:

The "International Money Laundering Abatement and Anti-Terrorism Financing Act of 2001"

- ⌘ **Broadly:** Strengthening tools to prevent, detect, and prosecute international money laundering and the financing of terrorism.
- ⌘ **Focus:** Correspondent banking facilities, private banking services, and transactions involving offshore jurisdictions.
- ⌘ **Goal:** to prevent the U.S. financial system and U.S. clearing mechanisms to be used by parties suspected of terrorism, terrorist financing and money laundering.
 - ⌘ Unique problems associated with detecting “terrorist financing”.

Remember KYC? It's back.



⌘ Flashback - 1999

- ☒ Title III - clear congressional mandate for subjecting certain high-risk jurisdictions, institutions, and classes of accounts and transactions to increased scrutiny and supervision.
- ☒ Law calls it "due diligence" and "enhanced due diligence".

⌘ Useful Definitions (with respect to banks *only*)

- ☒ Account
- ☒ Correspondent Account
- ☒ Payable Through Account
- ☒ Secretary of the Treasury required to define “account” and other terms for non-bank financial institutions.

Who is Covered?



⌘ Financial Institutions = insured banks, commercial bank or trust, private bankers, agency/branch of foreign bank, credit union, thrift, SEC registered broker / dealer, investment banker or co., currency exchange, issuer, redeemer of cashier of travelers' checks, operator of a credit card system, insurance co, dealer in precious metals, pawnbroker, loan / finance co, travel agency, licensed sender of money, telegraph co. (31 U.S.C. § 5312)

☑ Henceforth - “U.S. financial institution” covered by Title III

⌘ Foreign Central Bank(s)?

Current Law and Prospective Regulation:

Waiting for the Other Shoe to Drop

- ⌘ Secretary of the Treasury has broad discretion to implement rules and regulations to affect such changes.
 - ☑ Arguably, unable to ascertain the ultimate impact of Title III
 - ☑ Private sector financial institutions, both domestically and abroad, await regulations to better understand the breadth and depth of the Act.
 - ☑ Financial institutions moving quickly to ensure compliance with the Act.
 - ☑ Some provisions (notably Sections 313 and 319) effective as soon as December 25, 2001.
- ⌘ Recent Treasury Guidance:
 - ☑ <http://www.treas.gov/press/releases/regs.pdf>
 - ☑ Interim guidance to financial institutions on how to comply with the requirements of §313 and § 319(b) of the Act.
- ⌘ Board Guidance
 - ☑ SR Letter: <http://fedweb.frb.gov/fedweb/bsr/spsc/sdu/USAPage.htm>

Key Provisions:

Private Banking and Correspondent Banking

⌘ Private Banking § 312

- ☒ Private banking account(s) held for non-US persons
- ☒ Broad definition of "Private Banking Account"
- ☒ Minimum due diligence
- ☒ Enhanced scrutiny - politically exposed persons

⌘ Correspondent Banking, §§ 312, 313, 317, 319

- ☒ **Definition Correspondent Account** - "An account established to receive deposits from, make payment on behalf of a foreign financial institution, or handle other financial transactions related to such institution."
- ☒ Minimum due diligence & Enhanced due diligence (§ 312)
 - ☒ e.g. FATF Non-Cooperative Countries: Cook Islands; Dominica; Egypt; Guatemala; Hungary; Indonesia; Israel; Lebanon; Marshall Islands; Myanmar; Nauru; Nigeria; Niue; Philippines; Russia; St. Kitts and Nevis; and St. Vincent and the Grenadines.
- ☒ Prohibition on correspondent accounts for shell banks (§ 313) (*Treasury Certification*)
- ☒ Long-Arm Jurisdiction (§ 317)
- ☒ Interbank Account Forfeiture (§ 319(a))
- ☒ Record Keeping Requirements (§ 319(b)) (*Treasury Certification*)
 - ☒ 120 Hour Rule
- ☒ "Special Measures" § 311

Other Key Provisions:



- ⌘ **Concentration Accounts, § 325**
- ⌘ **Consideration of Anti-Money Laundering Record, § 327**
- ⌘ **Verification of Information - global due diligence § 326**
- ⌘ **Anti-Money Laundering Programs, § 352**
- ⌘ **Broker-Dealer SAR Reporting, § 356**
- ⌘ **Cooperative Efforts - information sharing, § 314**
 - ☒ Privacy Implications - exception to GLBA

Some Interesting Questions



⌘ Application of section 313 & 319

- ⌘ **Are non-U.S. financial institutions that are not banks (e.g., foreign broker-dealers) required to provide certification, or is the requirement applicable only to non-U.S. banks? (No - not yet).**
- ⌘ **Is a foreign branch / agency holding a correspondent acct at a U.S. financial institutions exempt from (§§ 313, 319) completing the certification for U.S. financial institutions? (Yes.)**
- ⌘ **Foreign branch / agency holding correspondent account(s) for the foreign parent bank? (Yes.)**
- ⌘ **Overnight lending activity? (Yes - unless excluded).**
- ⌘ **EDGE companies? (Yes - or should be)**
- ⌘ **Insurance Companies? (No, unless “correspondent account” defined for non-banks and such products are offered.)**

Other Titles

- ⌘ Title II of the USA Patriot Act expands the authority of the Government to obtain personal information about individuals in connection with investigations of terrorism by amending a number of federal laws including the Electronic Communications Privacy Act, the Stored Communications Act, the Cable Communications Policy Act, and the Foreign Intelligence Surveillance Act of 1947.
- ⌘ Title IV, entitled "Protecting the Border" creates enhanced procedures for monitoring the U.S. borders and tightens laws pertaining to monitoring, detection and detention of suspected foreign terrorists.
- ⌘ Title V attempts to remove obstacles to investigating terrorism. This part authorizes payment of rewards to combat terrorism, and amends various telephone, financial, education, and credit record access laws in conjunction with counter-terrorist activities and investigations.
- ⌘ Title VI provides assistance, compensation and financial aid to victims of terrorism, public safety officers and their families.

Other Titles



- ⌘ Title VII authorizes creation of secure information-sharing systems to enhance participating enforcement agencies' abilities to investigate and prosecute multi-jurisdictional terrorist activities.
- ⌘ Title VIII makes extensive amendments to Title 18, strengthening the criminal laws against terrorism and increasing penalties against terrorists or anyone harboring, concealing or providing support to terrorists.
- ⌘ Title IX creates a framework to permit improved sharing of information and intelligence between members of the intelligence community.
- ⌘ Title X includes a variety of miscellaneous provisions. For example, this part requires the Secretary of State, in conjunction with the Attorney General and Secretary of the Treasury, to develop, implement and maintain a money laundering watchlist identifying individuals worldwide who are known or suspected of money laundering.

Role of the FRB in the Terrorist Investigation



⌘ THE CONTROL LIST

- ☒ Created to supercede other lists
- ☒ Contains names of individuals and entities relevant to law enforcement's terrorist investigation
- ☒ Control List to be sent out to over 20,000 depository institutions
- ☒ Banks to search their records for the time period January 1, 1996 to present

⌘ SUSPICIOUS.ACCOUNTS@NY.FRB.ORG

- ☒ Legal Group (New York) assisting in terrorist investigation by searching Fedwire for names on the Control List and other names provided by law enforcement authorities

POSITIVE HITS TO THE CONTROL LIST



- ⌘ **Banks to send e-mail to SUSPICIOUS.ACCOUNTS indicating only that they have a positive response**
- ⌘ **New York Fed to forward the information to the U.S. Attorneys' office**
- ⌘ **U.S. Attorney's office to issue subpoena to the institution**

CONTROL LIST V. OFAC LIST



- ⌘ OFAC List issued pursuant to President Bush's September 24, 2001 Executive Order**
- ⌘ Banks are required to block accounts or transactions related to any names on the OFAC List**
- ⌘ OFAC List and Control List are completely separate**
- ⌘ Banks are not to block accounts or transactions related to any names on the Control List**

GLOBAL COOPERATION



- ⌘ **New York Fed has circulated the Control List internationally**
- ⌘ **Basel Committee Members as well as other various countries have received the Control List**
- ⌘ **Positive responses handled in accordance with laws of the individual countries**