

## **Patriot Act:** *Small businesses find out they are financial institutions*

In response to the Sept. 11, 2001, attacks against the World Trade Center and Pentagon, Congress enacted sweeping legislation that granted broad powers to various law enforcement agencies. The legislation, known as the USA PATRIOT Act of 2001 (better known simply as the "Patriot Act,") was designed to tackle perceived legal deficiencies in the war against terrorist activities.

The Patriot Act, which had the complete support of the Bush administration, has attracted numerous critics who claim that the legislation fails to adequately balance privacy and personal liberty concerns against the needs of government to inform

ation concerning possible terrorist activities. Many of those who have been critical of the Patriot Act have focused their criticism on some of the more intrusive aspects of the legislation, such as the requirements of libraries and librarians to identify the reading checked out by persons under surveillance.

Now, many business groups are beginning to criticize the Patriot Act on the basis of increased regulation on certain commercial operations. Members of the business community who have criticized the Patriot Act claim that it presents an unwarranted regulatory burden and additional costs on small business that are at best only marginally susceptible to usage by terrorist organizations.

Businesses, which often feel as if they are drowning in a sea of regulatory red tape, are being forced into the front-line of anti-terrorism activities. With administrative staffs often being cut to the bone, the imposition of the regulatory

schemes envisioned by the Patriot Act have many in small business being forced into choosing between regulatory compliance and profit.

In order to understand the concerns of the business community, it is important to recognize the three basic elements to the Patriot Act.

First, it gives law enforcement authorities the ability to track and intercept communications. Next, the law gives the U.S. Attorney General broader powers in dealing with non-citizens. Finally, the Act provides the Secretary of the Treasury with broad powers to contend with money-laundering activities.

It is the third aspect of the Patriot Act, the ability to combat money-laundering activities, that has caused the majority of concerns for American businesses. In large measure, the concerns are an outgrowth of the sheer number of businesses that are considered to be financial institutions under the Patriot Act, and thus subject to its regulations.

While banks, credit unions and thrifts are historically familiar with the Secretary of the Treasury's efforts to curb money-laundering and the regulatory requirements for transacting business, the Patriot Act extends the regulatory plan to a wider range of businesses as diverse as title companies, pawnbrokers, check cashing companies and even travel agencies.

To be more exact, businesses included within the Patriot Act as financial institutions include: banks, credit union, thrifts, broker/dealers registered with the SEC, broker/dealers in securities or commodities, currency exchangers, issuers, redeemers or cashiers of checks, operators of a credit card system, insurance companies, dealers in precious metals, stones or jewels, loan or finance companies, travel agencies, pawn brokers, transmitters of funds, telegraph companies, businesses involved in vehi-

cle sales, the U.S. Postal Service, governmental agencies carrying out a duty or power listed, casinos, persons involved in real estate closings and settlements (such as lawyers and title companies), businesses engaged in business similar to those named in the act, and businesses designated by the Secretary of Treasury with cash transactions subject to criminal, tax, or regulatory matters.

The Secretary of the Treasury has recognized that business designated as financial institutions do not all share the same risk of abuse from money-launderers. As a result, the Secretary of the Treasury has acknowledged that the requirements of an anti-money laundering program applicable to one industry may not be appropriate for another industry. The Secretary of the Treasury has indicated that it plans to tailor the regulatory requirements to fit the industry.

While the Patriot Act and the requirements imposed thereunder on various entities designated as a financial institution will vary because of the degree of concern expressed by the Secretary of the Treasury over the nature of the business and its potential for involvement in money laundering activities, certain basic requirements will be imposed.

Financial institutions will be required to develop and implement programs designed to prevent money laundering. At a minimum, the programs will require:

- Policies and procedures to detect and deter money laundering;
  - Designation of an internal compliance officer to ensure that the program is implemented;
  - Training programs for employees for the program; and
  - Audits of the compliance program.
- One constant in the development and implementation of a program to prevent

money laundering will be a plan for the positive identification of the customer base of a financial institution. As applied to banks, thrifts and credit unions, the program will require:

- Notification to the customer opening the account of the need for acceptable forms of identification;
- Verification of the identity of the person opening the account;
- Maintenance of identification verification records; and
- Comparison of the names of customers against the names contained in various Federal databases of known terrorists or terrorist organizations.

Businesses such as convenience stores that issue money orders and cash checks only receive a limited return for the service; often less than a dollar for the issuance of a money order. Virtually any regulatory record-keeping requirement could wipe out whatever profit margin that might be made from the sale of money orders. Money orders are traditionally the preferred monetary transaction of persons who are not generally bankable (those who could not open an account with a bank, thrift or credit union). The increased cost of regulatory compliance will be passed along to the consumer who, for a variety of reasons, may not have the qualifying identification data.

Many so called "financial institutions" have only recently recognized the role that the Patriot Act will play in their future. Those institutions are just beginning to struggle with the regulatory requirements imposed by the act. As they move further along in the process, more complaints can be expected from the business community.

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