

# NAR Issue Summary

## Business / Patriot Act/SDN List

### **NAR Committee:**

Business Issues Policy Committee

### **What is the fundamental issue?**

The passage of the USA PATRIOT Act, Bank Secrecy Act and the issuance of Executive Order 13224 increased the level of the government's scrutiny of financial transactions in an effort to prevent money laundering and block the financial dealings of terrorists and terrorist affiliated organizations.

### **I am a real estate professional. What does this mean for my business?**

Practitioners should be aware of the following: 1) financial institutions must implement a customer identification program and may ask a real estate professional's client for personal information to complete a financial transaction; and 2) real estate brokers, agents, settlements and closings may eventually be regulated under the Patriot Act's money laundering rules or under the FATF guidelines if implemented by the Department of Treasury's Financial Crime Enforcement Network (FinCEN).

### **NAR Policy:**

Regulations that would require real estate agents and brokers to gather and verify identity information would be duplicative given the existing anti-money laundering and terrorism financing regulations that govern United States financial institutions.

### **Opposition Arguments:**

Residential and commercial real estate is being used to launder money and finance terrorism. Examples of moneylaundering via the purchase of expensive real property have been well documented. The requirements of the Patriot Act, therefore, should be applied to the real estate sales and brokerage industry.

### **Legislative/Regulatory Status/Outlook**

The USA PATRIOT Act requires all financial institutions to create an anti-money laundering program and a customer identification program. In addition, under Executive Order 13224, which contains a list of "Specially Designated Nationals, all businesses have a responsibility to be vigilant in ensuring that they are not dealing with a restricted entity.



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Further pressure for regulation has come from an inter-governmental organization known as the Financial Action Task Force (FATF), a global organization of 30 countries, including the United States, that unanimously agreed to a common set of guidance for real estate agents and brokers to combat money laundering and the financing of terrorism.

In April 2003, the Treasury Department's Financial Crimes Enforcement Network (FinCEN) published an advanced notice of proposed rulemaking that requested feedback on whether real estate brokerage should be regulated. NAR, in its comment letter, argued that 1) real estate brokerage is not financial in nature, 2) there are sufficient IRS and state and local regulations that would capture suspicious real estate activity and 3) new regulations would be unnecessarily burdensome on small brokerage businesses.

On July 21, 2009, the Treasury Department's Financial Crimes Enforcement Network (FinCEN) published an advanced notice of proposed rulemaking on anti-money laundering and suspicious activity reporting for non-bank residential mortgage lenders and originators. In its letter, NAR commented that an incremental approach focusing on the financial side of the real estate transaction is the best method to achieve FinCEN and FATF objectives while avoiding unnecessary regulations on real estate agents. To date, FinCEN has not followed up with a notice of proposed rules that addresses real estate professionals .

FinCEN's reports on suspicious activity in mortgage fraud and commercial property management, money laundering regulations on real estate brokerage in Canada, New Zealand, and the United Kingdom, and FATF's guidance directed at real estate agents and brokers may prompt FinCEN to revisit this issue in the future.

### **Current Legislation/Regulation (bill number or regulation)**

No actions at this time.

