US Patriot Act, Title III: Anti-money-laundering to prevent terrorism

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Overview

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US Patriot Act, Title III: Anti-money-laundering to prevent terrorism is titled as **International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001**, is intended to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism. It primarily amends portions of the Money Laundering Control Act of 1986 (MLCA) and the Bank Secrecy Act of 1970 (BSA). It was divided into three subtitles:

1. The First Subtitle deals primarily with strengthening banking rules against money laundering, especially on the international stage
2. The Second Subtitle attempts to improve communication between law enforcement agencies and financial institutions, as well as expanding record keeping and reporting requirements
3. The Third Subtitle deals with currency smuggling and counterfeiting, including quadrupling the maximum penalty for counterfeiting foreign currency.

First Subtitle

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The first subtitle also tightened the record keeping requirements for financial institutions, making them record the aggregate amounts of transactions processed from areas of the world where money laundering is a concern to the U.S. government. It even made institutions put into place reasonable steps to identify beneficial owners of bank accounts and those who are authorized to use or route funds through payable-through accounts. The U.S. Department of Treasury was charged with formulating regulations intended to foster information sharing between financial institutions to prevent money-laundering. Along with expanding record keeping requirements, it put new regulations into place to make it easier for authorities to identify money laundering activities and to make it harder for money launderers to mask their identities. If money laundering was uncovered, the subtitle legislated for the forfeiture of assets of those suspected of doing the money laundering. In an effort to encourage institutions to take steps that would reduce money laundering, the Treasury was given authority to block mergers of bank holding companies and banks with other banks and bank holding companies that had a bad history of preventing money laundering. Similarly, mergers between insured depository institutions and non-insured depository institutions that have a bad track record in combating money-laundering could be blocked.

Restrictions were placed on accounts and foreign banks. It prohibited shell banks that are not an affiliate of a bank that has a physical presence in the U.S. or that are not subject to supervision by a banking authority in a non-U.S. country. It also prohibits or restricts the use of certain accounts held at financial institutions. Financial institutions must now undertake steps to identify the owners of any privately owned bank outside the U.S. who have a correspondent account with them, along with the interests of each of the owners in the bank. It is expected that additional scrutiny will be applied by the U.S. institution to such banks to make sure they are not engaging in money laundering. Banks must identify all the nominal and beneficial owners of any private bank account opened and maintained in the U.S. by non-U.S. citizens. There is also an expectation that they must undertake enhanced scrutiny of the account if it is owned by, or is being maintained on behalf of, any senior political figure where there is reasonable suspicion of corruption. Any deposits made from within the U.S. into foreign banks are now deemed to have been deposited into any interbank account the foreign bank may have in the U.S. Thus any restraining order, seizure warrant or arrest warrant may be made against the funds in the interbank account held at a U.S. financial institution, up to the amount deposited in the account at the foreign bank. Restrictions were placed on the use of internal bank concentration accounts because such accounts do not provide an effective audit trail for transactions, and this may be used to facilitate money laundering. Financial institutions are prohibited from allowing clients to specifically direct them to move funds into, out of, or through a concentration account, and they are also prohibited from informing their clients about the existence of such accounts. Financial institutions are not allowed to provide any information to clients that may identify such internal accounts. Financial institutions are required to document and follow methods of identifying where the funds are for each customer in a concentration account that co-mingles funds belonging to one or more customers.

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Second Subtitle

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The second annotation made a number of modifications to the BSA in an attempt to make it harder for money launderers to operate and easier for law enforcement and regulatory agencies to police money laundering operations. One amendment made to the BSA was to allow the designated officer or agency who receives suspicious activity reports notifying U.S. intelligence agencies. A number of amendments were made to address issues related to record keeping and financial reporting. One measure was a new requirement that anyone who does business file a report for any coin and foreign currency receipts that are over US$10,000 and made it illegal to structure transactions in a manner that evades the BSA's reporting requirements. To make it easier for authorities to regulate and investigate anti-money laundering operations, Money Services Businesses (MSBs)—those who operate informal value transfer systems outside the mainstream financial system—were included in the definition of a financial institution. The BSA was amended to make it mandatory to report suspicious transactions, and an attempt was made to make such reporting easier for financial institutions. FinCEN was made a bureau of the United States Department of Treasury, and the creation of a secure network to be used by financial institutions to report suspicious transactions and to provide alerts of relevant suspicious activities was ordered. Along with these reporting requirements, a considerable number of provisions relate to the prevention and prosecution of money-laundering. Financial institutions were ordered to establish anti-

money laundering programs, and the BSA was amended to better define anti-money laundering strategy. Also increased were civil and criminal penalties for money laundering and the introduction of penalties for violations of geographic targeting orders and certain record-keeping requirements. A number of other amendments to the BSA were made through subtitle B, including granting the Board of Governors of the Federal Reserve System power to authorize personnel to act as law enforcement officers to protect the premises, grounds, property and personnel of any U.S. National reserve bank and allowing the Board to delegate this authority to U.S. Federal Reserve Bank. Another measure instructed United States Executive Directors of international financial institutions to use their voice and vote to support any country that has taken action to support the U.S.'s War on Terrorism. Executive Directors are now required to provide ongoing auditing of disbursements made from their institutions to ensure that no funds are paid to persons who commit, threaten to commit, or support terrorism.

Third Subsection

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The third subtitle deals with currency crimes. Largely because of the effectiveness of the BSA, money launders had been avoiding traditional financial institutions to launder money and were using cash-based businesses to avoid them. A new effort was made to stop the laundering of money through bulk currency movements, mainly focusing on the confiscation of criminal proceeds and the increase in penalties for money laundering. Congress found that a criminal offense of merely evading the reporting of money transfers was insufficient and decided that it would be better if the smuggling of the bulk currency itself was the offense. Therefore, the BSA was amended to make it a criminal offense to evade currency reporting by concealing more than US$10,000 on any person or through any luggage, merchandise or other container that moves into or out of the U.S. The penalty for such an offense is up to 5 years' imprisonment and the forfeiture of any property up to the amount that was being smuggled. It also made the civil and criminal penalty violations of currency reporting cases be the forfeiture of all a defendant's property that was involved in the offense, and any property traceable to the defendant. The Act prohibits and penalizes those who run unlicensed money transmitting businesses. In 2005, this provision of the USA PATRIOT Act was used to prosecute Yehuda Abraham for helping to arrange money transfers for British arms dealer Hermant Lakhani, who was arrested in August 2003 after being caught in a government sting. Lakhani had tried to sell a missile to an FBI agent posing as a Somali militant. The definition of counterfeiting was expanded to encompass analog, digital or electronic image reproductions, and it was made an offense to own such a reproduction device. Penalties were increased to 20 years' imprisonment. Money laundering “unlawful activities” was expanded to include the provision of material support or resources to designated foreign terrorist organizations. The Act specifies that anyone who commits or conspires to undertake a fraudulent activity outside the jurisdiction of the United States, and which would be an offense in the U.S., will be prosecuted under 18 U.S.C. § 1029, which deals with fraud and related activity in connection with access devices.

Source: https://en.wikipedia.org/wiki/Patriot_Act#Title_III:_Anti-money-laundering_to_prevent_terrorism