

**TO:** State Association Executives/Government Affairs Directors

**FROM:** David Lereah, Senior Vice President and Chief Economist  
Joe Ventrone, Managing Director, Regulatory & Industry Relations

**RE:** USA Patriot Act and Executive Order No. 13224: *What Do They Mean for Real Estate?*

**DATE:** July 30, 2004

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The USA Patriot Act and the President’s Executive Order No. 13224, along with its Special Designated Nationals and Blocked Persons list (SDN), are both intended to curb, and prevent, business interactions with terrorist organizations. The Patriot Act and the Executive Order have differing compliance requirements, but the same overall goal.

Several recent news articles have mischaracterized and/or confused the impact of these measures on real estate professionals. A recent article in the New York Daily News mentioned that commercial real estate brokers are “personally responsible for making sure prospective tenants aren't terrorists.”<sup>1</sup> It should be made clear that all businesses are prohibited from dealing with SDN entities and that there are no special rules specific to commercial real estate.

The table below describes the purpose of each as it pertains to real estate.

	<b>Patriot Act</b>	<b>Executive Order No. 13224</b>
Description	The Patriot Act requires that all financial institutions implement a customer identification program (CIP), as well as a money laundering program. The federal government includes in their definition of financial institution “persons involved in real estate settlements and closings.”	On September 23, 2001, President Bush signed Executive Order No. 13224, which expressly prohibits business transactions with Specially Designated Nationals and Blocked Persons List (SDN). Among other things, it provides: <ul style="list-style-type: none"> <li>• “any transaction or dealing by United States persons or within the United States in property or interests in property blocked pursuant to the order is prohibited, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit” of individuals and entities designated under the order.</li> <li>• “any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order is prohibited.”</li> </ul>

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<sup>1</sup> “Fighting Terror with Brokers” by Lore Croghan, New York Daily News, July 21, 2004.

	<b>Patriot Act</b>	<b>Executive Order No. 13224</b>
Relevance	<p><b>There are no current rules in place for “persons involved in real estate settlements and closings” pursuant to the Patriot Act. It is likely, however, that there will be future regulatory action.</b></p> <p>In early 2003, the Department of Treasury issued an Advanced Notice of Proposed Rulemaking to seek comments on what the rules should be for real estate pursuant to the Patriot Act. NAR argued that additional money laundering requirements may prove burdensome.</p> <p><b><i>Treasury will not issue rules that will affect real estate brokers.</i></b></p>	<p><b>All businesses are expressly prohibited from entering into business relationships with SDN entities.</b></p> <p>The Office of Financial Assets and Control (OFAC), within the Treasury, has established specific regulations for the following industries:                      (1) Banking, (2) Import/Export, (3) Securities, (4) Insurance, (5) Tourism, and (6) Credit Reporting.</p> <p><b><i>Real estate is not a specially regulated industry.</i></b></p>
Impact on Real Estate Professionals	<p>Treasury, in its Patriot Act compliance rules, defines “financial institutions” as “institutions regulated by the Treasury Department, the Federal Reserve System, FDIC, the OCC, the OTS, the SEC, the CFTC, and the National Credit Union Administration.” In order to comply with Treasury’s CIP requirements, these institutions must implement a program to:</p> <ul style="list-style-type: none"> <li>• Collect identifying information about customers opening an account.</li> <li>• Verify that the customers are who they say they are.</li> <li>• Maintain records used to verify their identity</li> <li>• Determine whether customer appears on any list of suspected terrorists or terrorist organizations.</li> </ul> <p><b>Financial institutions must, as a matter of course, verify a customer’s identity. Therefore, a financial institution may ask for additional information from a Realtor’s client.</b></p>	<p>As with all businesses that do not fall into the above six industry areas, real estate professionals must be aware of whom they are dealing with.</p> <p><b>Real estate professionals, because of the highly interactive nature of the business, may want to consider periodically checking the SDN list to ensure they are not dealing with restricted entities.</b></p> <p><b><u>This is particularly relevant for:</u></b></p> <ul style="list-style-type: none"> <li>• <b><u>Real estate professionals who lease commercial space.</u></b></li> <li>• <b><u>Real estate professionals who operate multi-housing units.</u></b></li> </ul> <p><i>As noted above, the credit reporting industry is subject to specific rules and regulations under this executive order. Generally, during the course of a financial transaction, a credit report will flag a potential SDN match. It is then incumbent upon the business or entity requesting the information to verify that match’s identity.</i></p>
Bottom Line	<p><b>Treasury will not issue rules pursuant to the Patriot Act that will affect real estate brokers.</b></p> <p><b>Rules affecting persons involved in real estate settlements and closings will be forthcoming.</b></p> <p><b>Real estate professionals should be mindful of IRS form 8300 which requires that cash transactions in excess of \$10,000 be reported.</b></p> <p><b>Financial institutions may ask a broker’s client for more personal information for CIP purposes.</b></p>	<p><b>There are no industry specific regulations governing real estate pursuant to this executive order.</b></p> <p><b>However, real estate professionals, like all other businesses, must take necessary steps to ensure they are not dealing with SDN entities.</b></p>

The Department of Treasury's Executive Office for Terrorist Financing and Financial Crime, through its Financial Crimes Network (FinCEN) and Office of Foreign Assets Control (OFAC), oversees both Patriot Act regulations and Executive Order 13224 compliance. Information can be found at:

<http://www.treas.gov/offices/eotffc/>

Specific questions regarding compliance with either Executive Order 13224 or the Patriot Act may be directed to OFAC's compliance hotline: 202-622-2490.

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