



Financial Crimes Enforcement Network Department of the Treasury

FACT SHEET Section 312 of the USA PATRIOT Act Final Regulation and Notice of Proposed Rulemaking

December 2005

The Financial Crimes Enforcement Network today sent for publication in the *Federal Register* a final regulation implementing the foreign correspondent account provisions and the private banking provisions of section 312 of the USA PATRIOT Act. Simultaneously, the Financial Crimes Enforcement Network sent for publication a related notice of proposed rulemaking relating to one key provision of section 312 that requires enhanced due diligence for correspondent accounts maintained for certain foreign banks. The *Federal Register* will publish both regulations after January 1, 2006. This Fact Sheet summarizes the basic requirements of the final rule and the proposed rule as well as the effective dates of the final rule.

Overview

Section 312 of the USA PATRIOT Act requires U.S. financial institutions to perform due diligence and, in some cases, enhanced due diligence, with regard to correspondent accounts established or maintained for foreign financial institutions and private banking accounts established or maintained for non-U.S. persons. The final rule issued today implements the general due diligence requirements pertaining to foreign financial institutions as well as the due diligence and enhanced scrutiny requirements pertaining to private banking accounts. The notice of proposed rulemaking addresses the enhanced due diligence requirements pertaining to correspondent accounts maintained for certain foreign banks.

I. International Correspondent Banking Provisions

General Due Diligence – the Final Rule

The final rule implementing section 312 requires certain U.S. financial institutions to apply due diligence to correspondent accounts maintained for certain foreign financial institutions.

(1) What is a correspondent account?

The final rule retains the statutory definition of a correspondent account found in the USA PATRIOT Act, which defines a correspondent account broadly to include any

account established for a foreign financial institution to receive deposits from, or to make payments or other disbursements on behalf of, the foreign financial institution, or to handle other financial transactions related to such foreign financial institution. While this is a relatively broad definition, it requires a formal relationship through which the financial institution provides regular services.

(2) Which U.S. financial institutions are covered by the correspondent banking portion of the final rule?

The following U.S. financial institutions are covered by the correspondent banking provisions of the final rule: (1) banking institutions; (2) securities broker-dealers; (3) futures commission merchants and introducing brokers in commodities; and (4) mutual funds.

(3) Which foreign financial institutions are subject to the due diligence required by the correspondent banking portion of the final rule?

The final rule applies to correspondent accounts maintained for the following foreign financial institutions: (1) a foreign bank; (2) a foreign branch of a U.S. bank; (3) a business organized under a foreign law that, if it were located in the United States, would be a securities broker-dealer, futures commission merchant, introducing broker in commodities, or a mutual fund; and (4) a money transmitter or currency exchanger organized under foreign law.

(4) What are the general due diligence requirements of the correspondent banking portion of the final rule?

U.S. financial institutions covered by the final rule must establish a due diligence program that includes appropriate, specific, risk-based, and, where necessary, enhanced policies, procedures, and controls that are reasonably designed to detect and report known or suspected money laundering activity conducted through or involving any correspondent account established, maintained, administered, or managed in the United States.

At a minimum, the due diligence program must: (1) determine whether the account is subject to enhanced due diligence under section 312 (see discussion of the notice of proposed rulemaking below); (2) assess the money laundering risk posed, based on a consideration of relevant risk factors; and (3) apply risk-based policies, procedures, and controls to each such correspondent account reasonably designed to detect and report known or suspected money laundering activity, including a periodic review of the correspondent account activity. The final rule provides guidance to financial institutions in assessing the risks posed by a correspondent relationship by outlining several risk factors to be considered as appropriate.

Enhanced Due Diligence Requirements – The Notice of Proposed Rulemaking

Section 312 contains a provision requiring U.S. financial institutions to apply enhanced due diligence when establishing or maintaining a correspondent account for a foreign bank that is operating: (1) under an offshore license; (2) in a jurisdiction found to be non-cooperative with international anti-money laundering principles; or (3) in a jurisdiction found to be of primary money laundering concern under section 311 of the USA PATRIOT Act. With regard to correspondent accounts for such banks, the statute requires U.S. financial institutions to take reasonable steps to: (1) conduct appropriate enhanced scrutiny; (2) determine whether the foreign bank itself offers correspondent accounts to other foreign banks (*i.e.*, nested accounts) and, as appropriate, identify such foreign bank customers and conduct additional due diligence on them; and (3) identify the owners of such foreign bank, if its shares are not publicly traded;

The original proposed rulemaking issued in 2002 sought to create an exception to the enhanced due diligence requirement for those offshore banks that were branches of well-regulated foreign banks. Specifically, we proposed to exclude from enhanced due diligence those foreign banks operating under an offshore banking license that are branches of banks licensed in a jurisdiction where one or more banks had been determined by the Federal Reserve to be subject to comprehensive supervision or regulation on a consolidated basis. The notice of proposed rulemaking issued today takes a different approach, focusing instead on clarifying that U.S. financial institutions have some flexibility in applying the enhanced due diligence procedures on a risk-assessed basis, tailoring the enhanced due diligence to the risks associated with the particular account. Comments are sought on all aspects of this proposed rulemaking.

II. Private Banking Provisions

The final rule requires certain U.S. financial institutions to establish and maintain a due diligence program for private banking accounts that is reasonably designed to detect and report any known or suspected money laundering or suspicious activity. Included in this requirement is the duty to conduct enhanced scrutiny of any private banking account that is maintained for senior foreign political figures, their immediate family members, or persons widely and publicly known to be close associates of such individuals.

(1) What is a private banking account?

The final rule reflects the statutory definition found in the USA PATRIOT Act, which defines a private banking account as an account that is established or maintained for the benefit of one or more non-U.S. persons, requires a minimum aggregate deposit of funds or other assets of not less than \$1,000,000, and is assigned to a bank employee who is a liaison between the financial institution and the non-U.S. person.

Significantly, if an account otherwise satisfies the definition of a private banking account as described above, but the institution does not *require* a minimum balance of \$1,000,000, then the account does not qualify as a private banking account under this

rule. However, the account is subject to the internal controls and risk-based due diligence included in the institution's general anti-money laundering program.

(2) Which U.S. financial institutions are covered by the private banking portion of the final rule?

The private banking rule covers the same financial institutions as the correspondent banking final rule, namely: (1) banking institutions; (2) securities broker-dealers; (3) futures commission merchants and introducing brokers in commodities; and (4) mutual funds (although the Financial Crimes Enforcement Network understands that mutual funds do not currently offer private banking accounts).

(3) What are the general due diligence requirements of the private banking portion of the final rule?

U.S. financial institutions covered by the final rule are required to establish and maintain a due diligence program that includes policies, procedures, and controls that are reasonably designed to detect and report any known or suspected money laundering or suspicious activity conducted through or involving any private banking account that is established, maintained, administered, or managed in the United States.

Specifically, financial institutions covered by the final rule must take reasonable steps to: (1) determine the identity of all nominal and beneficial owners of the private banking account; (2) determine whether any such owner is a senior foreign political official and, thus, is subject to enhanced scrutiny (described below); (3) determine the source(s) of funds deposited into the private banking account and the purpose and expected use of the account; and (4) review the activity of the account to ensure that the activity is consistent with the information obtained about the source of funds, the stated purpose and the expected use of the account, as needed to guard against money laundering, and to report any suspicious activity.

(4) Who are Senior Foreign Political Figures?

The final rule defines a "senior foreign political figure" as: a current or former senior official in the executive, legislative, administrative, military, or judicial branches of a foreign government, whether or not they are or were elected officials; a senior official of a major foreign political party; and a senior executive of a foreign government-owned commercial enterprise. This definition also includes a corporation, business, or other entity formed by or for the benefit of such an individual. Senior executives are individuals with substantial authority over policy, operations, or the use of government-owned resources.

Also included in the definition of a senior foreign political figure are immediate family members of such individuals, and those who are widely and publicly known (or actually known) close associates of a senior foreign political figure.

(5) Enhanced scrutiny for Senior Foreign Political Figures.

The final rule requires the application of enhanced scrutiny to private banking accounts maintained for senior foreign political figures. Enhanced scrutiny must include procedures reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption. The final rule defines "proceeds of foreign corruption" to include any asset acquired by, through, or on behalf of a senior foreign political figure through misappropriation, theft, or embezzlement of public funds, the unlawful conversion of property of a foreign government, or through acts of bribery or extortion, and include any other property into which any such assets have been transformed or converted.

III. Implementation

Financial institutions covered by the final rule have **90 days** from the time the regulation is published in the *Federal Register* to establish and apply the due diligence requirements to "new" correspondent and private banking accounts. A new account is one established at least 90 days after the date of the regulation's publication. For existing accounts and those accounts established before the 90-day time frame described above, the final rule takes effect **270 days** from the time the regulation is published in the *Federal Register*.

Special note: In July of 2002, the Financial Crimes Enforcement Network issued an interim rule requiring banking institutions to apply the correspondent and private banking due diligence provisions of section 312 pending issuance of a final rule. Additionally, the interim rule requires securities broker-dealers and futures commission merchants and introducing brokers in commodities to apply the private banking due diligence provisions of section 312 pending issuance of a final rule. Those statutory requirements remain effective until the final rule takes effect in 90 and 270 days, respectively, as described above. Furthermore, banking institutions must continue to apply the enhanced due diligence provisions of section 312 to their correspondent accounts until a final rule relating to enhanced due diligence is issued and becomes effective.