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UNDERWRITING MEMORANDUM 02-13

To: All South Carolina Agents
From: South Carolina State Office
Date: December 18, 2002
Re: USA Patriot Act Update

Here is the current status of the USA PATRIOT ACT:

- a) Based upon current proposed US Treasury definitions¹, title insurers acting solely as title insurers do not have to comply with the federal USA PATRIOT Act.
- b) **Persons involved in Real Estate Closings and Settlements must comply with Office of Foreign Asset Control (OFAC) regulations relative to verifying the identity of their parties, maintaining records for at least five years, consulting the OFAC list of known or suspected terrorists, reporting suspicious transactions and reporting cash transfers in excess of \$10,000.** You should note, however, the discussion below of the ABA's assertion of attorney/client privilege and make your own decision as to compliance.

USA PATRIOT ACT REQUIREMENTS FOR PERSONS INVOLVED IN REAL ESTATE CLOSINGS AND SETTLEMENTS

The USA PATRIOTS Act², among other things, requires "persons involved in real estate closings and settlements"³ for closings on or after October 25, 2002 to:

- (A) **verify the identity** of any person seeking to open an account to the extent reasonable and practicable;
- (B) **maintain records** of the information used to verify a person's identity, including name, address, and other identifying information; and
- (C) **consult lists of known or suspected terrorists** or terrorist organizations provided ... by any government agency to determine whether a person seeking to open an account appears on any such list.⁴

If there is a party who may be on the list, you must review the list and the collected identity information, determine if it is likely that the party is the one on the list and if applicable, notify OFAC.

Additionally, the closer must also **report "suspicious activities"**. The American Land Title Association is working with the Department of the Treasury on guidelines to define "suspicious activities" for real estate closers.

¹ Proposed 31 C.F.R. Part 103.137, draft issued 7/11/2002

² H.R. 3162 signed October 26, 2001

³ 31 U.S.C. 5312(a)(2)(U)

⁴ 31 U.S.C. 5318 (l)



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Finally, The USA PATRIOT Act also increases penalties for the failure to comply with **reporting cash transactions in excess of \$10,000.**

PERSONS INVOLVED IN REAL ESTATE CLOSINGS AND SETTLEMENTS

“Persons involved in real estate closings and settlements” is not defined but this term appears to include those parties handling the funds in transactions, including escrow closers. The American Bar Association, however, has asserted that if that party is an attorney acting on behalf of his/her client, the attorney/client privilege applies. The Department of the Treasury has not formally responded to the ABA’s position as of this date. You are advised to review the statute and either decide that the USA PATRIOTS Act should be complied with, obtain the clients’ limited waiver of the attorney/client privilege for this matter or decide to assert the privilege. Where you decide to assert the attorney/client privilege, you should still comply with the identification and record keeping portions of the act.

VERIFICATION OF IDENTITY

Closers should require a government issued piece of identification providing the “name, address and other identifying information” of their customers.

Most of the time the piece of identification will be a copy of the driver’s license. It may also be a passport or some other state issued I.D. card.

Other identifying information is not defined. The most useful information from a review of the official terrorist list is the date of birth and place of birth for individuals. Additional information may be available from the loan application, if available, or from a judgment affidavit where the affidavit asks for date of birth and place of birth.

Customer is not defined. Until further regulation, customer should be construed as the record seller, the party designated by the seller to receive funds, if applicable, and the record buyer.

RECORD KEEPING

Regulations⁵ require records to be kept for “...at least 5 years”. Records should include the identification relied upon.

CONSULTING LISTS OF KNOWN TERRORISTS

The official list of terrorists is found at www.treas.gov/ofac at the selection “SDN and Blocked Persons”. The list is nearly 300 pages long. There are additional ways of searching that list than the federal website.

Where the title examination was made in reliance on the public judgment index, you must consult a website to check the names. One of the better websites currently available is the American Land Title Association’s at www.ALTA.org. Click on the box labeled “Department of Treasury SDN / Blocked Persons”, and type in the name.

Another option would be to obtain a computer disk setting forth the SDN / Blocked Persons file in a searchable word processing format and update the disk frequently.

REPORTING PARTIES ON THE TERRORIST LIST

Where it appears that a customer may be a party on the list, please call OFAC. Note that OFAC instructions state “Financial institutions are reminded to check the SDN list for descriptor information on the targets before

⁵ 31 C.F.R Part 501.601



Chicago Title Insurance Company

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calling OFAC Compliance. A quick check of the data listed in an entry may eliminate the need for making the phone call. Please pay particular attention to the way names are listed, birth dates, places of birth, and locations. Financial institutions must file blocking reports within 10 days of blocking any item or account. Each report should be clearly labeled "Blocking Report." Regulations prohibit disclosure of a Blocking Report to any person involved in the transaction that is reported."

REPORTING SUSPICIOUS ACTIVITIES

Until regulations are issued, parties should consult with OFAC if you have what you view as a suspicious activity.

REPORTING CASH PAYMENTS OVER \$10,000

As always you must continue to report cash payments in excess of \$10,000 on IRS Form 8300.

ANTI- MONEY LAUNDERING PROGRAMS

The Treasury Department extended the time for implementation of Section 352 (requiring the establishment of anti-money laundering programs). For persons involved in real estate closings and settlements it is deferred for another six months by rule dated October 25, 2002.

QUESTIONS

If you have any questions about the Act please contact Linda L. Duzick, Office of Thrift Supervision at 202-906-6565 or linda.duzick@ots.treas.gov.