

Special Measures — Overview

Objective. *Assess the bank's compliance with statutory and regulatory requirements for special measures issued under section 311 of the USA PATRIOT Act.*

Section 311 of the USA PATRIOT Act added 31 USC 5318A to the BSA, which authorizes the Secretary of the Treasury to require domestic financial institutions and domestic financial agencies to take certain special measures against foreign jurisdictions, foreign financial institutions, classes of international transactions, or types of accounts of primary money laundering concern. Section 311 provides the Secretary of the Treasury with a range of options that can be adapted to target specific money laundering and terrorist financing concerns. Section 311 is implemented through various orders and regulations that are incorporated into 31 CFR Chapter X.¹³⁹ As set forth in section 311, certain special measures may be imposed by an order without prior public notice and comment, but such orders must be of limited duration and must be issued together with a Notice of Proposed Rulemaking.

Section 311 establishes a process for the Secretary of the Treasury to follow, and identifies federal agencies to consult before the Secretary of the Treasury may conclude that a jurisdiction, financial institution, class of transactions, or type of account is of primary money laundering concern. The statute also provides similar procedures, including factors and consultation requirements, for selecting the specific special measures to be imposed against a jurisdiction, financial institution, class of transactions, or type of account that is of primary money laundering concern.

It is important to note that, while a jurisdiction, financial institution, class of transactions, or type of account may be designated of primary money laundering concern in an order issued together with a Notice of Proposed Rulemaking, special measures of unlimited duration can only be imposed by a final rule issued after notice and an opportunity for comment.

Types of Special Measures

The following five special measures can be imposed, either individually, jointly, or in any combination:

Recordkeeping and Reporting of Certain Financial Transactions

Under the first special measure, banks may be required to maintain records or to file reports, or both, concerning the aggregate amount of transactions or the specifics of each transaction with respect to a jurisdiction, financial institution, class of transactions, or type of account that is of primary money laundering concern. The statute contains minimum information requirements for these records and reports and permits the Secretary of the Treasury to impose additional information requirements.

¹³⁹ Notices of proposed rulemaking and final rules accompanying the determination “of primary money laundering concern,” and imposition of a special measure(s) pursuant to section 311 of the USA PATRIOT Act are on the [FinCEN Web site](#).

Information Relating to Beneficial Ownership

Under the second special measure, banks may be required to take reasonable and practicable steps, as determined by the Secretary of the Treasury, to obtain and retain information concerning the beneficial ownership of any account opened or maintained in the United States by a foreign person (other than a foreign entity whose shares are subject to public reporting requirements or are listed and traded on a regulated exchange or trading market), or a representative of such foreign person, that involves a jurisdiction, financial institution, class of transactions, or type of account that is of primary money laundering concern.

Information Relating to Certain Payable Through Accounts

Under the third special measure, banks that open or maintain a payable through account in the United States involving a jurisdiction, financial institution, class of transactions, or type of account that is of primary money laundering concern may be required (i) to identify each customer (and representative) who is permitted to use the account or whose transactions are routed through the account and (ii) to obtain information about each customer (and representative) that is substantially comparable to that which the bank obtains in the ordinary course of business with respect to its customers residing in the United States.¹⁴⁰

Information Relating to Certain Correspondent Accounts

Under the fourth special measure, banks that open or maintain a correspondent account in the United States involving a jurisdiction, financial institution, class of transactions, or type of account that is of primary money laundering concern may be required to: (i) identify each customer (and representative) who is permitted to use the account or whose transactions are routed through the account; and (ii) obtain information about each such customer (and representative) that is substantially comparable to that which a United States depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.¹⁴¹

Prohibitions or Conditions on Opening or Maintaining Certain Correspondent or Payable Through Accounts

Under the fifth, and strongest, special measure, banks may be prohibited from opening or maintaining in the United States any correspondent account or payable through account for, or on behalf of, a foreign financial institution if the account involves a jurisdiction, financial institution, class of transactions, or type of account that is of primary money laundering concern. The imposition of this measure can prohibit U.S. banks from establishing, maintaining, administering, or managing in the United States a correspondent or payable through account for, or on behalf of, any financial institution from a specific foreign jurisdiction. This measure may also be applied to specific foreign financial institutions and their subsidiaries.

¹⁴⁰ Refer to expanded overview section, “Payable Through Accounts,” page 194, for additional guidance.

¹⁴¹ Refer to core overview section, “Foreign Correspondent Account Recordkeeping, Reporting and Due Diligence,” pages 111, and expanded overview section, “Correspondent Accounts (Foreign),” page 177, for additional guidance.

The regulations that implement these prohibitions may require banks to review their account records to determine whether they maintain no accounts directly for, or on behalf of, such entities. In addition to the direct prohibition, banks may also be:

- Prohibited from knowingly providing indirect access to the specific entities through its other banking relationships.
- Required to notify correspondent account holders that they must not provide the specific entity with access to the account maintained at the U.S. bank.
- Required to take reasonable steps to identify any indirect use of its accounts by the specific entity.

Special Measures Guidance

Orders and regulations implementing specific special measures taken under section 311 of the USA PATRIOT Act are not static; they can be issued or rescinded over time as the Secretary of the Treasury determines that a subject jurisdiction, institution, class of transactions, or type of account is no longer of primary money laundering concern. In addition, special measures imposed against one jurisdiction, institution, class of transactions, or type of account may vary from those imposed in other situations. Examiners should also note that an order or rule imposing a special measure may establish a standard of due diligence that banks must apply to comply with the particular special measure.

Accordingly, this manual does not detail specific final special measures, because any such listing could quickly become dated. Examiners reviewing compliance with this section should visit the [FinCEN Web site](#) for current information on final special measures. Examiners should only examine for those special measures that are final, and should not review banks for special measures that are proposed.