

**SCHWARTZ & BALLEN**  
**1990 M STREET, N.W. · SUITE 500**  
**WASHINGTON, DC 20036-3418**  

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**(202) 776-0700**

FACSIMILE  
(202) 776-0720

**M E M O R A N D U M**

January 14, 2002

To Our Clients And Friends

Re: Interim Rule and Notice of Proposed Rulemaking Implementing USA Patriot Act:  
Reporting of Certain Currency Transactions by Nonfinancial Trades or Businesses

**SUMMARY**

The USA Patriot Act requires that any person who is engaged in a nonfinancial trade or business and receives more than \$10,000 in coin or currency must file a report of the transaction with the Treasury Department. The Financial Crimes Enforcement Network ("FinCEN") has issued interim and proposed rules amending the Bank Secrecy Act to implement this requirement. This interim rule is effective as of January 1, 2002.

As the reporting requirements required by the USA Patriot Act are almost identical to those currently required by the Internal Revenue Service, the interim rule adopts the reporting form, rules and definitions used by the IRS. Financial institutions which are already required to report currency transactions under the Bank Secrecy Act are exempt from this interim rule.

FinCEN has also issued a notice of proposed rule making that would make the interim rule permanent. The proposed rule is identical to the interim rule. Comments on the proposed/interim rule can be submitted to: Cash Reporting-Section 5331 Comments, PO Box 1618, Vienna, VA 22183-1618 or sent by email to: [regcomments@fincen.treas.gov](mailto:regcomments@fincen.treas.gov). Comments must be received by March 1, 2002.

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### **REQUIREMENTS**

The interim rule provides that a person, who in the course of a trade or business, receives currency in excess of \$10,000 in a single or related transactions must make a report of such receipt with the Treasury Department within fifteen days of receipt of the payment. A person receiving currency in excess of \$10,000 for the account of another or who is acting as an agent of another must also file a report.

Reports must be made for transactions where the initial currency received is less than \$10,000 but where subsequent related payments received within one year of the initial payment cause the total of all currency payments to exceed \$10,000. The report must be filed within fifteen days of the receipt of the payment that causes the total of all payments to exceed \$10,000.

A person required to file a report under the interim rule must file an IRS/FinCEN Form 8300 with the IRS. The person making the report must verify the identity of the person from whom the reportable currency is received. Copies of the report must be maintained for five years.

Reports need not be filed:

- by financial institutions which are already required to file Form 4789, Currency Transaction Report;
- if the transaction occurs entirely outside the United States;
- if the transaction is not in the ordinary course of a person's trade or business,
- by casinos meeting certain requirements; and
- by an agent who receives currency from a principal and uses all of the currency within 15 days in a currency transaction as long as the second transaction is reported.

### **DEFINITIONS**

“Currency” means:

- the coin and currency of the United States or of any other country, and
- a cashier's check, bank draft, traveler's check or money order having a face value of not more than \$10,000 received in a “designated reporting transaction” or received in a transaction where the recipient knows that an attempt is being made to avoid reporting requirements.

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However, generally, cashier's checks, bank drafts, traveler's checks or money orders received are not considered currency if they are proceeds of a loan from a bank, payment on a promissory note or an installment sales contract, or received pursuant to certain down payment plans.

A "designated reporting transaction" means a retail sale of a consumer durable, a collectible or a travel or entertainment activity. A "consumer durable" is an item of tangible personal property that is for personal consumption, has a useful life of at least a year, and has a sales price of more than \$10,000.

The FinCEN interim rule elaborates on the summary statements made above and provides examples to illustrate its provisions and definitions. A copy of the interim rule can be found at <http://www.schwartzandballen.com/WhatsNew.htm>.

If you have any questions concerning FinCEN's interim rule, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700.