

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 13-253—sSB 911

Banks Committee

Finance, Revenue and Bonding Committee

**AN ACT CONCERNING MONEY TRANSMISSION AND CONSUMER
COLLECTION AGENCIES**

SUMMARY: This act makes numerous changes in the Money Transmission Act and consumer collection agency statutes.

With respect to the Money Transmission Act, it:

1. expands licensing requirements;
2. alters bonding, investment, and net worth requirements for affected businesses;
3. allows licensees to use authorized delegates, rather than agents, to conduct business;
4. changes the information applicants and licensees must provide to the banking commissioner; and
5. expands exemptions from the act's provisions.

With respect to the consumer collection agency statutes, the act:

1. subjects debt buyers to the same requirements as consumer collection agencies, with the exception of bond requirements;
2. expands licensing requirements;
3. adds new fund management and recordkeeping requirements;
4. requires consumer collection agencies to determine a debtor's legal obligation to pay collection fees;
5. requires consumer collection agencies to advise debtors that their debt may be uncollectible due to a statute of limitations and provides the specific required disclosure language; and
6. exempts banks and certain of their subsidiaries and affiliates from the consumer collection agency statutes.

The act also makes a clarifying change regarding exchange facilitators.

Lastly, the act makes conforming and technical changes.

EFFECTIVE DATE: October 1, 2013

§§ 1-19 — THE MONEY TRANSMISSION ACT

Generally, the Money Transmission Act regulates businesses, other than banks, that receive and transmit money. It requires these businesses to be licensed, imposes financial conditions on them, and subjects them to Banking Department oversight.

§§ 2 & 3 — Covered Activities

Prior law required a person to be licensed if he or she was in the business of

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(1) issuing Connecticut payment instruments or (2) receiving money for transmission, transmitting it by any means, or issuing stored value. The act eliminates the distinction between these two businesses and incorporates both under the term “money transmission” business. It extends the licensure requirement to anyone (1) issuing or selling payment instruments or stored value, including payment instruments that are checks or drafts, and (2) advertising or soliciting money transmission services.

The act deems someone to be engaged in the money transmission business in Connecticut if the person:

1. has a place of business in Connecticut,
2. receives money or monetary value in Connecticut or from a person located in Connecticut,
3. transmits money or monetary value from a location in Connecticut or to a person located in Connecticut,
4. issues stored value or payment instruments that are sold in Connecticut, or
5. sells stored value or payment instruments in Connecticut.

By law, knowingly conducting business without a license is a class D felony (see Table on Penalties).

§§ 2 & 4 — Application Information

The act changes the information license applicants must provide to the banking commissioner. By law, applicants must provide information on a number of topics, including (1) principal office location; (2) information, including past criminal convictions, on the applicant and any partners, directors, trustees, officers, shareholders with at least 10% of each class of securities, or members; and (3) material litigation in the last five years.

Instead of requiring the name and address of each branch, subsidiary, affiliate, or agent in the state engaged in the (1) business of selling or issuing Connecticut payment instruments or (2) money transmission business, the act requires the name and address of each location and authorized delegate through which the licensee will engage in the money transmission business. The act defines an “authorized delegate” as a person designated by a licensee to provide money transmission services on the licensee’s behalf.

The act also requires applicants to submit:

1. the name and address of any financial institution used for a money transmission business in the state and
2. a sample of the contract showing the proposed arrangement between the applicant and any authorized delegate.

The act also changes the audits and financial statements that applicants must provide. Under prior law, they were required to provide an audited, unconsolidated financial statement, including a balance sheet, receipts, and disbursements for the preceding year prepared by an independent certified public accountant acceptable to the commissioner. The act instead requires:

1. the applicant’s audited financial statement for the most recent fiscal year;
2. if the applicant is a wholly-owned subsidiary of a corporation, the (a) applicant’s or parent corporation’s most recent audited consolidated

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- annual financial statements and (b) applicant's audited unconsolidated financial statement, including balance sheet, receipts, and disbursements for the preceding year;
3. if the applicant is a publicly traded entity, the applicant's most recent 10-K report filed with the Securities and Exchange Commission (SEC) (an annual report on the company's performance);
 4. if the applicant is a wholly owned subsidiary of a publicly traded company, the parent company's most recent 10-K report filed with the SEC; and
 5. if the applicant or parent of a wholly owned subsidiary is publicly traded on a foreign exchange, documents similar to the 10-K report filed with the appropriate securities regulator.

Prior law required the applicant to state whether he or she would engage in (1) issuing money orders, travelers checks, or electronic payment instruments or (2) the money transmission business. The act instead requires the applicant to describe the type of money transmission business he or she will conduct.

Outstanding Money Transmissions. Under prior law, applicants were required to provide the dollar amount of their outstanding payment instruments as of (1) the date of the financial statement they must file and (2) a date within 30 days of filing the application. The act instead requires them to provide the dollar amount of any outstanding money transmissions.

It also alters when a payment instrument is considered "outstanding." By law, a money order, travelers check, electronic payment instrument, or stored value is considered "outstanding" if (1) it is sold or issued in the United States; (2) the licensee received a report of it from its agent (or authorized delegate under the act); and (3) the issuer has not yet paid it. Under the act, checks and drafts are considered outstanding under the same circumstances. The act provides that, for other types of money transmissions, "outstanding" means the value reported to the licensee for which the licensee or authorized delegate has received money or its equivalent from the customer for transmission, but has not completed the transmission by delivering the money or value to the person designated by the customer.

§ 4 — Notices to Commissioner

The act requires an applicant seeking to get or renew a license to give the commissioner notice of any change in information within 15 days after learning of it. Under prior law, changes had to be reported promptly.

By law, a licensee must provide written notice to the commissioner within one business day after having reason to know of certain convictions. This includes conviction of the licensee or a partner, director, trustee, principal officer, member, or shareholder owning at least 10% of each class of the licensee's securities of a (1) misdemeanor involving money transmission or issuing Connecticut payment instruments or (2) felony. The act also requires notice of indictments for these crimes.

Under prior law, an applicant was required to notify the commissioner of an agent's felony conviction. The act instead applies this notice requirement to

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crimes by authorized delegates and expands it to include a delegate's (1) conviction of a misdemeanor involving money transmission and (2) indictment for one of these misdemeanors or a felony.

§ 5 — Nonrefundable Fees

The act makes the initial license and license renewal fees nonrefundable. Prior law required the commissioner to refund the fee when an original license was denied, the commissioner refused to renew a license, or an application was withdrawn before issuance or renewal. The license fee is \$2,250, except it is \$1,250 if paid more than a year before a license expires. By law, applicants also pay a nonrefundable \$625 investigation fee.

§ 5 — Surrendering Licenses

Under prior law, a licensee was required to surrender its license to the commissioner in person or by registered or certified mail, within 15 days of ceasing business in the state. The act instead requires written notice of surrender to the commissioner and no longer specifies how the licensee must surrender the license.

The act requires the notice to (1) identify the location where the licensee's records will be stored and (2) provide the name, address, and phone number of an individual authorized to give access to the records. The act specifies that surrendering the license does not reduce or eliminate the licensee's civil or criminal liability for acts or omissions before the surrender, including administrative actions by the commissioner to (1) revoke or suspend a license, (2) assess a civil penalty, (3) order restitution, or (4) exercise other authority.

§ 6 — Application Approval

Under prior law, the commissioner was required to conditionally approve a license application after making certain findings and give the applicant 30 days, which the commissioner could extend for cause, to meet the law's bonding or investment requirements and achieve final approval for a license. The act eliminates the conditional approval process and requires an applicant to meet all of these requirements before the commissioner can issue a license.

§ 6 — Application Denial for Specially Designated Nationals

The act allows the commissioner to deny an application if the applicant or any of its partners, directors, trustees, principal officers, major shareholders (at least 10% owners), or members is listed on the specially designated nationals and blocked persons list prepared by the U.S. Treasury Department (see BACKGROUND).

§ 7 — License Suspension for Unpaid Fee

The act requires the commissioner to automatically suspend a license renewal that has been issued but has not gone into effect if the required investigation or license fee is paid by ACH (i.e., automated clearing house, an electronic network

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for financial transactions) and returned. By law, this suspension is mandatory when a fee is paid by a dishonored check.

§ 8 — Bond Requirements

The act changes bonding requirements for licensees. Under the act, the bond runs concurrently with the license instead of being in force for the license period and two years after the license is surrendered, revoked, suspended, or expires.

The act specifies that the bond is conditioned on the licensee’s and its authorized delegates’ (1) faithful performance of their obligations related to the money transmission business in the state and (2) conducting business in the state consistent with the laws.

The act alters the bond requirements, as shown in Table 1.

Table 1: Bond Requirements for Licenses Under Prior Law and the Act

Amount of Bond	When Required Under Prior Law	When Required Under the Act
\$300,000	Licensee has: <ul style="list-style-type: none"> • average daily balance of outstanding Connecticut payment instruments during the two previous reporting quarters of up to \$300,000 or • average weekly amount of money or monetary value received or transmitted (the greater of them) during the two previous reporting quarters of up to \$150,000 	For last year ending June 30, licensee has under \$300,000 average weekly amount of: <ul style="list-style-type: none"> • money received or transmitted in the state and • stored value and payment instruments issued or sold in the state
\$500,000	Licensee has: <ul style="list-style-type: none"> • average daily balance of outstanding Connecticut payment instruments during the two previous reporting quarters of more than \$300,000 	For last year ending June 30, licensee has between \$300,000 and \$500,000 average weekly amount of: <ul style="list-style-type: none"> • money received or transmitted in the state and • stored value and payment instruments issued or sold in

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	<p>but less than \$500,000 or</p> <ul style="list-style-type: none"> • average weekly amount of money or monetary value received or transmitted (the greater of them) during the two previous reporting quarters of more than \$150,000 but less than \$250,000 	the state
\$1 million	<p>Licensee has:</p> <ul style="list-style-type: none"> • average daily balance of outstanding Connecticut payment instruments during the two previous reporting quarters of \$500,000 or more or • average weekly amount of money or monetary value received or transmitted (the greater of them) during the two previous reporting quarters of \$250,000 or more 	<p>For last year ending June 30, licensee has over \$500,000 average weekly amount of:</p> <ul style="list-style-type: none"> • money received or transmitted in the state and • stored value and payment instruments issued or sold in the state

As under prior law, the bond must be in favor of the commissioner.

The law deems the licensee’s bond proceeds held in trust for the benefit of claimants against the licensee’s faithful performance of its obligations. The act alters the scope of the licensee’s obligations to match the act’s expansion of the money transmission business and also makes the bond subject to an authorized delegate’s obligations. (The act also makes these changes regarding the investments a licensee may make in place of some or all of the bond requirement.)

By law, the commissioner may proceed on the bond against the principal, surety, or both, to collect a civil penalty in Banking Department enforcement proceedings. The act also allows (1) the commissioner to collect restitution and

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unpaid costs of examining the licensee on the bond and (2) a person who may be damaged by the licensee's or authorized delegate's failure to perform their obligations in Connecticut to proceed against the bond to recover damages. The act limits claims on the bond to those made within two years of the act, error, or omission that allegedly caused or resulted in damage.

The act eliminates the commissioner's authority to lower the amount required on a bond based on a licensee's level of business and outstanding Connecticut payment instruments after a license is surrendered, revoked, suspended, or expires.

The act:

1. allows the commissioner to require a new bond when there is an action on a bond;
2. requires a licensee to file a new bond immediately when there is a recovery on a bond; and
3. allows the commissioner to require additional bonds if the licensee's financial condition requires it, based on (a) a reduction of tangible net worth, (b) financial losses, or (c) potential losses due to statutory violations. (The licensee must file such bonds within 10 days of receiving written notice from the commissioner requiring them.)

§ 9 — Investments

Prior law required a licensee to maintain permissible investments with a value, using generally accepted accounting principles, of at least the aggregate amount of its outstanding Connecticut payment instruments and stored value. The act instead requires the investment to at least equal all outstanding money transmissions in the state. The act specifies that the value of receivables due from authorized delegates' proceeds from selling payment instruments that are not past due or doubtful of collection cannot exceed 30% of the permissible investments. It prohibits receivables due from one person from exceeding 10% of the permissible investments.

Under prior law, these investments were held in trust for the licensee's faithful performance of his or her obligations. The act alters the scope of the licensee's obligations to match the act's definition of the money transmission business and also makes the investments subject to an authorized delegate's obligations.

§ 10 — Net Worth Requirements

The act changes the different net worth requirements set in prior law for licensees. It (1) subjects those who sell payment instruments to the net worth requirements and (2) requires that calculations be based on tangible assets, which excludes intangible assets (e.g., intellectual property rights).

By law, licensees issuing Connecticut money orders must maintain a minimum \$100,000 net worth. The act also applies this requirement to licensees issuing or selling checks or drafts.

Under prior law, a licensee who issued stored value was required to maintain a minimum \$500,000 net worth. The act increases the net worth requirement to \$1 million and retains the commissioner's authority to require a higher amount under

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generally accepted accounting principles.

By law, licensees that issue other forms of money transmission must have a net worth of \$500,000. The act extends this requirement to licensees that sell other forms of money transmission.

§ 12 — Annual Information From Licensees

The act changes the information that licensees must provide to the commissioner each year.

Under prior law, they were required to provide the most recently audited unconsolidated financial statement, including balance sheets, receipts, and disbursements for the preceding year, prepared by an independent certified public accountant acceptable to the commissioner. Instead, the act requires:

1. the licensee's audited financial statement for the most recent fiscal year;
2. if the licensee is a wholly owned subsidiary of a corporation, the (a) parent corporation's or licensee's most recently audited consolidated annual financial statements and (b) licensee's most recently audited unconsolidated financial statement, including balance sheets, receipts, and disbursements for the preceding year;
3. if the licensee is a publicly traded entity, the licensee's most recent 10-K report filed with the SEC;
4. if the licensee is a wholly owned subsidiary of a publicly traded company, the parent company's most recent 10-K report filed with the SEC; and
5. if the licensee or parent of a wholly owned subsidiary is publicly traded on a foreign exchange, documents similar to the 10-K report filed with the appropriate securities regulator.

The act also makes conforming changes to reflect the act's changes to the definition of the money transmission business.

§ 13 — Compliance with Federal Reporting Law

By law, licensees are required to comply with the federal Currency and Foreign Transactions Reporting Act (which requires reporting to combat money laundering and other criminal activities) and any regulations under it. The act requires a licensee, at the commissioner's request, to provide proof of compliance with the federal law. The act makes a violation of the federal law or its regulations also a violation of the Money Transmission Act and a basis for an enforcement action by the commissioner.

§§ 2, 3, 11, 14-15, & 19 — Authorized Delegates

Instead of allowing licensees to conduct business through agents, the act allows them to do so through authorized delegates. It requires delegates to work only with licensed entities. It prohibits them from working with an entity exempt from licensing, which prior law allowed for an agent.

The act requires licensees to notify the commissioner of all their authorized delegates. Under prior law, agents could not engage in business for a licensee through subagents. The act only allows authorized delegates to engage in business through other authorized delegates of the same licensee. Under prior law, the

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licensee and agent were required to notify the commissioner in writing if they terminated their contract. The act requires only the licensee to provide this notice if a licensee-authorized delegate contract is terminated.

The act applies many of the statutory rules that apply to agents to authorized delegates, including the following:

1. they do not need a license, but must have a contract with a licensee and provide services only within the contract's scope;
2. they hold proceeds in trust for licensees and must remit money under the contract's terms;
3. licensees are liable for any loss to a purchaser or holder of a payment instrument or stored value sold in Connecticut due to an authorized delegate's failure to forward the amount due;
4. their contracts are ineffective when a licensee's license is suspended;
5. licensees must provide delegates with policies and procedures to ensure compliance with the law;
6. the commissioner can examine them; and
7. the commissioner can terminate the relationship between the delegate and licensee.

Under prior law, one of the reasons for which the commissioner could order a licensee to terminate its relationship with an agent was the agent's refusal to allow an examination of its books and records. The act instead applies this to authorized delegates when the delegate fails to cooperate with an examination or investigation by the commissioner. It also allows the commissioner to terminate the relationship when an authorized delegate is convicted of an act involving fraud or dishonesty.

Notice of Changes. The act requires a licensee to notify the commissioner in writing within 15 days of any change in the licensee's list of authorized delegates or locations where the licensee or its authorized delegates engage in the money transmission business in Connecticut. The notice must state the name of each delegate and its location.

§§ 15 & 18 — Records Requirements

The act requires licensees to maintain and prepare records that enable the commissioner to determine whether the licensee and its authorized delegates are complying with the law. The records must be at the office named in the license. At the commissioner's request, the licensee must make the records available at that office or send them to the commissioner within five business days by (1) registered or certified mail, return receipt requested or (2) express delivery carrier that provides a dated delivery receipt. The commissioner can grant additional time on request.

The act requires licensees to maintain for at least five years:

1. a record of each payment instrument or stored value obligation sold in Connecticut;
2. a general ledger posted at least monthly with all asset, liability, capital, income, and expense accounts;
3. bank statements and reconciliation records;

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4. records of outstanding money transmissions in Connecticut;
5. records of each payment instrument and stored value obligation paid in the last five years;
6. the last known names and addresses of all authorized delegates; and
7. other records the commissioner requires.

As with other violations of the Money Transmission Act, the act makes violations of these provisions grounds to suspend, refuse to renew, or revoke a license.

§ 16 — Exclusions From Act's Provisions

Under prior law, the Money Transmission Act's provisions were generally not applicable to federally insured federal banks, out-of-state banks, federal credit unions, and out-of-state credit unions unless they acted through an agent that was not (1) one of these entities, (2) a Connecticut bank, or (3) a Connecticut credit union.

The act instead exempts these entities unless they act through someone who is not (1) a federally insured bank or a credit union, (2) licensed under the Money Transmission Act or one of their authorized delegates, or (3) exempt from licensure.

Under prior law, Connecticut banks and credit unions were generally exempt from the act. The act exempts them under the same conditions as the other entities listed above.

By law, the U.S. Postal Service is generally exempt from the Money Transmission Act's provisions. The act exempts contractors who engage in the business of money transmission in Connecticut on the service's behalf.

By law, entities are exempt if their only activity is electronic funds transfers of government benefits for or on behalf of a federal, state, other government, or quasi-government agency or government-sponsored enterprise.

While prior law exempted these entities from most of the Money Transmission Act's provisions, it required them to follow provisions on agents, including (1) authorizing them to conduct business through agents, (2) making them liable for losses, (3) establishing agents' duties to hold and remit money, and (4) contract requirements. The act provides that exempt entities are not required to follow these provisions as applied to authorized delegates under the act.

§ 17 — Regulations

The act extends the commissioner's authority to adopt regulations to cover new provisions added by the act.

§§ 22-27 — CONSUMER COLLECTION AGENCIES

§ 22 — Definition

The act brings debt buyers under the jurisdiction of the consumer collection agency statutes by amending the definition of "consumer collection agency" to include any person who buys debt that is delinquent or in default and then

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engages in the business of collecting on such debt. By law, a “consumer collection agency” is generally any person engaged in the business of collecting or receiving (1) payment for others of any account, act, or other indebtedness from a consumer or (2) payment for property tax from a property tax debtor on behalf of a municipality.

The act also excludes from the definition (1) Connecticut and out-of-state banks, (2) subsidiaries or affiliates of such banks that are not primarily engaged in the business of purchasing and collecting delinquent debt, and (3) persons engaged in the business of collecting or receiving payment for debt secured by real property.

§ 23 — *Licensure Requirements*

By law, a person acting as a consumer collection agency in Connecticut must obtain a license from the Banking Department. The act requires a person to obtain a license for both the main office and each branch office where such business is conducted.

The act requires consumer collection agencies that are located out-of-state that collect on their own debt from consumers who reside in Connecticut to obtain a license. Under prior law, out-of-state collection agencies were required to obtain a license only if they collected debt on behalf of a third party in-state creditor from consumers who reside in Connecticut.

Prior law allowed the commissioner to issue a license if (1) he was satisfied that the applicant was properly qualified and trustworthy in all respects and (2) granting the license was not against the public interest. The act instead allows the commissioner to issue a license only if:

1. applicants, partners, members, officers, directors, and principal employees (i.e., related persons) demonstrate financial responsibility, character, reputation, integrity, and general fitness to warrant the belief that the applicant will operate soundly, efficiently, in the public interest, and consistent with the law’s purposes and
2. the applicant is financially solvent (e.g., not involved in bankruptcy or receivership proceedings).

The act requires the commissioner to deny a license if he fails to make such findings and requires him to notify an applicant of the reasons for such a denial.

§ 24 — *Records Retention*

The act requires each consumer collection agency to maintain its consumer debtor and creditor records for at least two years after (1) the final entry date or (2) if the agency collects child support, the last payment date.

The records must clearly identify all consumer debtors’ payment amounts and dates and remittances made to creditors. Agencies collecting child support must also keep originals or copies of the agreements they entered into with creditors owed the child support. These accounting records must follow generally accepted accounting practices and be made available to the banking commissioner.

The act also requires each third party consumer collection agency to deposit funds it collects on behalf of others in one or more trust accounts in a Connecticut

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financial institution (e.g., bank or credit union). The accounts must be reconciled monthly and cannot be comingled with the agency's funds or used by the agency to conduct business. The act specifies that these accounts may be used only to (1) deposit funds received from consumer debtors (using generally accepted accounting practices), (2) pay these funds to creditors, (3) refund overpayments to consumer debtors, and (4) pay consumer collection agency fees monthly. The act requires any withdrawal from the account, other than for these specified reasons, to be reimbursed by the consumer collection agency within 30 days after the withdrawal.

§ 26 — Prohibited Practices

The act allows consumer collection agencies to (1) purchase claims for the purpose of collection or filing a lawsuit and (2) comingle money collected for a creditor, claimant, or forwarder with their own funds or using the money to conduct business.

By law, a consumer collection agency is prohibited from charging a consumer a fee when collecting a debt, unless the consumer is legally liable for the fee. In this case, the fee cannot exceed 15% of the total amount collected and accepted as full satisfaction of the debt. The act requires the agency to obtain from the creditor a copy of any contract or agreement between the consumer and creditor to determine if the consumer is legally liable for the fee. It also allows the agency to charge the consumer a fee for court costs, which is not subject to the 15% limit.

The act prohibits a consumer collection agency from failing to inform a consumer in its initial communication that it is collecting a debt that is beyond the statute of limitation (see BACKGROUND). Specifically, the agency must provide the applicable disclosure below in at least ten-point font.

1. If the debt is not past the time limit under federal law:

“The law limits how long you can be sued on a debt. Because of the age of your debt, (INSERT OWNER NAME) will not sue you for it. If you do not pay the debt, (INSERT OWNER NAME) may report or continue to report it to the credit reporting agencies as unpaid.”

2. If the debt is past the time limit under federal law:

“The law limits how long you can be sued on a debt. Because of the age of your debt, (INSERT OWNER NAME) will not sue you for it and (INSERT OWNER NAME) will not report it to any credit reporting agencies.”

§§ 25 & 27 — Enforcement

The act requires each consumer collection agency to comply with the federal Fair Debt Collection Practices Act. It allows the banking commissioner to take certain enforcement actions against an agency that fails to do so, including license suspension, revocation, and non-renewal.

The act also allows the commissioner to issue a cease and desist order to a consumer collection agency he believes is engaging in unfair or deceptive practices. By law, the commissioner is allowed to impose a civil penalty for such a violation.

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§ 28 — EXCHANGE FACILITATORS

PA 13-135 requires an exchange facilitator to, at all times, (1) maintain a minimum \$250,000 errors and omissions insurance policy executed by a Connecticut-authorized insurer, (2) deposit an unspecified amount of cash or securities, or (3) provide at least \$250,000 in irrevocable letters of credit. The act specifies that the deposit of cash or securities must also be \$250,000.

BACKGROUND

Specially Designated Nationals

The Treasury Department's Office of Foreign Assets Control publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers. Collectively, such individuals and companies are called "specially designated nationals." Their assets are blocked and U.S. persons are generally prohibited from dealing with them.

Federal Statute of Limitations

The federal Fair Credit Reporting Act prohibits a consumer reporting agency from reporting accounts that have been (1) charged off (i.e., the original creditor deems it uncollectable); (2) placed for collection; or (3) subject to similar action (e.g., delinquent debts) that are more than seven years old, unless they involve a credit transaction of \$150,000 or more. The seven-year period starts 180 days from the date of the original delinquency (15 USC § 1681c(i)).

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