

USA PATRIOT Act and Planned Giving

By Terry Price

For decades, money laundering in the United States has been a federal criminal offense. Financial institutions have always been required to assist authorities in countering money laundering attempts by maintaining programs and filing reports on certain transactions. Such attempts were mainly designed to identify funds acquired through criminal activity being disguised in legitimate transactions, with most of the reporting done after the fact.

With the escalation of global terrorism, international financing has been found to play a key role in terrorist activities. While terrorist transactions may involve the use of criminally acquired proceeds in the traditional sense, this is not always the case. For example, terrorist money may come from individual donations. What those donations are spent on might not be criminal at all, but used to attract new followers, buy advertising or media exposure, start an internet site, or open ideological schools.

With the recognition that terrorists were utilizing a different type of money laundering, the passage of the USA PATRIOT Act attempted to address that problem. Title III of the Act imposes much broader regulations on all financial institutions regarding the identification and verification of customers **before** they open new accounts. Over the past year, these regulatory requirements started to affect non-profit institutions and their donors. It appears development

officers will have to educate future donors on federal regulations when new gifts are made. Here is some of the information we have noticed being required when a new account (i.e. a new CRT) is established.

- What is the identity of the person creating the trust?
- Can you verify the person's identity with a drivers license or passport?
- What is the source of the funds or property being donated?
- What business activities generated the funds?
- When were they acquired?
- If inherited, from whom were they inherited? And when?

As with many government regulations, specifics are often left to each financial institution. Such is the case with the PATRIOT Act. Therefore, one company's individual requirements may differ from another. However, every financial institution is now under the same obligation to identify those who open new accounts. Thus, we expect the need to gather such personal donor information to become much more the norm in the future. Penalties for not doing so are quite severe, including the immediate closing of the account within a very short time.

Informing oneself of these new regulations is probably the key to successfully working with

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New California Legislation for Gift Annuities

By Ken Dike

As mentioned in our *Summer 2004* newsletter, a bill was introduced in the California Senate on January 6, 2004, by Senator Scott that increased the maximum allowable equity exposure of charitable gift annuity reserves from ten to fifty percent. This bill, which was passed by the Senate on May 17, 2004, and the Assembly on August 12, 2004, was signed by the Governor of California on August 27, 2004.

This law amends section 11521.2 of the California Insurance Code as follows:

11521.2. (a) The reserve required by the table of commensurate values for each annuity contract issued must be invested in investments specified in Sections 1170 through 1182 except that a certificate holder may invest in securities listed and traded on the New York Stock Exchange, the American Stock Exchange or regional stock exchanges or the National Market System of the NASDAQ Stock Market or successors to such exchanges or market having the same qualifications, to the extent of the lesser of net worth (assets over liabilities and reserves) of the certificate holder or 50 percent of these general investments. This section does not permit investment in options or commodity exchanges.

(b) The certificate holder may invest in other investments as permitted by and subject to the written consent of the commissioner.

As also noted in our *Summer 2004* newsletter, increasing the maximum allowable equity exposure from ten to fifty percent provides the following benefits for charitable organizations issuing charitable gift annuities to California residents:

1) it permits charities to more fully diversify their charitable gift annuity investment portfolio reducing total portfolio risk. This is especially beneficial in situations where the portfolio is invested predominately in bonds during times of historically low interest rates,

2) it is more in line with the total return concept of investing that recognizes all forms of investment returns including interest/dividends, and realized/unrealized gains and losses and which attempts to maximize a portfolio's total return including the common stock potential for capital appreciation, and

3) it increases the chance that charities, which base the amount of the annuity payment on rates established by the American Council on Gift Annuities (ACGA), will achieve the ACGA target total return of six percent and ultimate remainder (funds existing when the annuity payments terminate) of fifty percent of the initial gift.



"USA PATRIOT Act" continued

donors in understanding and communicating the need to acquire this extra level of personal detail. Over the next few months, Clifford Associates will be working with our custodians to establish specific guidelines to help development officers collect the additional data needed to comply with the PATRIOT Act. As we come up with recommendations, we will certainly be sharing them with you.



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