

Legal Authorities Underlying the Terrorist Finance Tracking Program

- The SWIFT data is provided pursuant to subpoenas based on statutory mandates and related Executive orders for combating terrorism.
- The International Emergency Economic Powers Act of 1977 authorizes the President, during a national emergency, to investigate bank transfers and other transactions in which a foreign person has any interest. 50 U.S.C. § 1702. Similarly, the United Nations Participation Act authorizes the President, when implementing United Nations Security Council Resolutions, to investigate economic relations or means of communication between any foreign person and the United States. *See* 22 U.S.C. § 287c; UNSCR 1333 (2000) and 1373 (2001).
- In Executive Order 13224, relying in part on IEEPA and the UNPA, the President declared a national emergency to deal with the 9/11 terrorist attacks and the continuing and immediate threat of further attacks, and blocked the property of, and prohibited transactions with, persons who commit, threaten to commit, or support terrorism. 66 Fed. Reg. 49079 (Sept. 25, 2001). The President delegated his authorities under the Executive Order to the Secretary of the Treasury. Treasury issued the subpoenas to SWIFT pursuant to Executive Order 13224 and its implementing regulations. *See* 31 C.F.R. Part 594; 31 C.F.R. § 501.602.

For background:

- The subpoenas fully comport with applicable Fourth Amendment standards (*i.e.*, the investigation of terrorism is properly authorized by the Congress; the data requested are “reasonably relevant” to that investigation; and the subpoenas are not unduly burdensome).
- The Foreign Intelligence Surveillance Act, 50 U.S.C. §§ 1801-1863, is not applicable to the Program. The SWIFT data is produced pursuant to a subpoena for financial records. Treasury is not engaged in “electronic surveillance” – it is not acquiring any radio or wire communication (*see* 50 U.S.C. § 1801(f)(1), (2), (3)) and there does not exist a legitimate expectation of privacy with respect to financial records (*see* 50 U.S.C. § 1801(f)(4); *United States v. Miller*, 425 U.S. 435, at 442-43).
- The Right to Financial Privacy Act of 1978 (RFPA), 12 U.S.C. §§ 3401-3422, is not applicable to the Program. RFPA delineates procedural requirements for a government agency to obtain from a bank financial records of its individual customers, such as by administrative subpoena. RFPA does not apply, however, to a company such as SWIFT that does not have individual persons as customers, but rather acts as an intermediary for financial institutions.
- Under the Bank Secrecy Act, Treasury mandates that financial institutions maintain and provide transaction records for law enforcement purposes, including for counter-terrorism investigations. *See, e.g.*, 31 U.S.C. § 5318; and 12 U.S.C. § 1829b.