

In Anti-Human Trafficking Measures, Federal Judge Sees New Duties for Banks

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State and federal measures designed to combat international human trafficking and child labor will obligate financial institutions to apply tougher due diligence standards to corporate accounts, a federal judge said Monday.

A White House executive order issued in September will require federal contractors to annually certify that they do not exploit trafficked labor. The order also requires contractors and subcontractors whose foreign receipts exceed \$500,000 to post a compliance plan on the company's Web site or face contract termination, fines or prison sentences.

"There's going to be a requirement to train a whole number of individuals in a setting on how to comply" with a policy that will "absolutely" apply to financial institutions, said Mary Kendall, U.S. judge for the Northern District of Illinois, who spoke at the *American Bankers Association/American Bar Association Money Laundering Enforcement Conference* in Washington, D.C.

The California Transparency in Supply Chains Act, which took effect in January, already requires companies with more than \$100 million in assets to publicly verify that their supply chains mitigate the likelihood that forced labor was used to create their products. The law potentially affects over 3,200 retail and manufacturing companies throughout the state.

The law also requires direct suppliers to certify that the production of the material used in their products complies with the child labor and human trafficking laws in the country from which the product originates.

The measures mean that overseas profits gleaned from products made with coerced labor "represent the proceeds of an illegal activity," said Markus Funk, a Chicago-based attorney with Perkins Coie LLP. "Along with the California legislation, the [executive] order is another thing for the banking world to worry about."

"There is good reason to believe that eventually banks will have to treat trafficked products like they would narcotics profits and terrorist financing," said Funk. As a specified unlawful activity, the proceeds of human trafficking and child labor could be subject to U.S. asset forfeiture rules, he said.

In addition to having to ensure customer compliance with the executive order and other state measures, banks will also have to take a closer look at their overseas staff and call centers, said a compliance officer based in New York City, who spoke on condition of anonymity.

Over 2.5 million people are trafficked annually, generating \$30 billion in proceeds, according to United Nations statistics. More than half of the victims reside in the Asia-Pacific region, with 270,000 trafficking victims living in industrial nations, including the United States.

“There is so much money moving that there is no way we’re not seeing at least some of it moving through [U.S.] correspondent accounts,” said William Langford, general counsel for global compliance and regulatory management with JPMorgan Chase in New York, during a panel at the conference.

In May 2010, the bank published the results of a study designed to determine whether anti-money laundering programs could be used to detect customers and transactions linked to human trafficking. The study listed several indicia of the crime, including the use of international wires and regular payments made from bank accounts to online classified ad services.

The study also identified several ‘intermediary’ businesses prone to human trafficking violations, including travel agencies, labor contractors, farms, textile manufacturers, nail salons and massage parlors.

“It’s sometimes rare when you combine the machinery and resources with what we do with our anti-money laundering program to something like human trafficking and produce such tangible results,” said Langford.

The September executive order borrows several provisions from bipartisan, companion bills yet to be considered by the House and Senate. Sen. Marco Rubio (R-FL) said he would continue to seek passage of his bill “to give the order the power of law,” the *Orlando Sentinel* reported in September.