

# INSURERS AND THE USA PATRIOT ACT

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## *Introduction*

No person of sufficient age will ever forget where they were and what they were doing the morning of September 11, 2001. The news reports began with an explosion in the North tower of the World Trade Center and ended with nineteen men executing a suicide mission killing thousands, hijacking and crashing four planes into two symbols of the nation's business and military might. A host of responses, private and public, followed the terrorist attacks. One such response was the enactment of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.<sup>1</sup>

Insurance Companies are covered by the Act as "financial institutions."<sup>2</sup> The Act requires that all financial institutions establish anti-money laundering programs and further requires the Secretary of the Treasury to adopt minimum standards for financial institutions regarding the identity of certain customers.<sup>3</sup>

Since insurance companies had not previously had to comply with requirements for anti-money laundering programs, the regulations implementing the Act were much anticipated.

## *Anti-Money Laundering Regulations*

On September 26, 2002 Treasury did issue proposed anti-money laundering regulations for insurance companies.<sup>5</sup> In these proposed regulations, Treasury limited the definition of "insurance company" to:

"[A]ny person engaged within the United States as a business in:

- (A) The issuing, underwriting, or reinsuring of a life policy;
- (B) The issuing, granting, purchasing, or disposing of any annuity contract; or
- (C) The issuing, underwriting, or reinsuring of any insurance product with investment features similar to those of a life insurance policy or an annuity contract, or which can be used to store value and transfer that value to another person."<sup>6</sup>

Additionally, the definition of "insurance company" specifically excludes agents and brokers.<sup>7</sup> It is believed that this definition should exclude most property and casualty and health insurers because those products generally lack investment features and value transferability.

For insurance companies that are subject to the anti-money laundering regulations, the development and implementation of a written program approved by senior management is required.<sup>8</sup> The minimum requirements for the program include:

- (1) Incorporating policies, procedures, and internal controls based upon the insurance company's assessment of the money laundering and terrorist financing risks associated with its products, customers, distribution channels, and geographic locations.
- (2) Designating a compliance officer who will be responsible for ensuring effective implementation of the program, necessary updating of the program and education and training.
- (3) Providing for on-going education and training of appropriate persons concerning their responsibilities under the program.
- (4) Providing for independent testing to monitor and maintain an adequate program.<sup>9</sup>

Treasury will accept written comments on the proposed regulations until November 25, 2002. Property and casualty trade groups have expressed concerns regarding the applicability of the proposed regulations to retroactive rating plans and use of annuities for structured settlements. Although clarifications and examples provide guidance, it appears that a deposit account with a retroactive rating plan is not similar to the investment features of life and annuity products, and the purchasing of annuities for structured settlements is not synonymous to engaging in the annuity business as such.

Once the final rule is published, insurance companies have ninety days to adopt an anti-money laundering program that meets the minimum standards.

### ***Know Your Customer – or Suffer the Consequences***

Treasury is expected to issue proposed customer identification regulations for insurance companies by the end of October 2002. Since the proposed anti-money laundering regulations for insurance companies were aimed at life insurers, it is foreseeable that the upcoming customer identification regulations will follow suit.

Insight on the customer identification regulations for insurance companies may be gleaned from the already proposed customer identification regulations for non-insurance financial institutions.

A Customer Identification Program must include:

- (1) Written plan approved by management tailored to the size, location and type of business.
- (2) Program must be a part of the required anti-money laundering program.
- (3) Program must include procedures for verifying the identity of each new customer, to the extent reasonable and practicable.
- (4) Prior to opening or adding a signatory to an account, the minimal information required is: name; birth date for individuals; resident address and mailing address, if different, for individuals; principal place of business and mailing address if different, for entities; a taxpayer identification number for U.S. persons; a taxpayer identification number, *passport number and country of issuance, alien identification card number, or number and country of issuance of any other government issued document evidencing nationality or residence and bearing a photograph or similar safeguard for non-U.S. persons.*
- (5) Program must contain risk-based procedures for verifying the identity information within a reasonable time after the account is established or a signatory is added to the account using documents and non-documentary methods, and response procedures when a reasonable belief on the true identity of a customer cannot be made.
- (6) Records must be retained for five years after the date the account is closed.
- (7) Program must include *procedure for determining whether the customer appears on any list of known or suspected terrorists.*
- (8) Program must include procedures for providing customers with adequate notice that information to verify their identity is being requested.<sup>10</sup>

### ***Currency Reporting Requirements***

The Act's expanded currency reporting requirements do apply to ALL insurance companies, agents and brokers.

Any person who is engaged in a trade or business and who, in the course of such trade or business receives more than \$10,000 in coins or currency in one transaction or two or more related transactions shall file a report with the Financial Crimes Enforcement Network.<sup>11</sup>

The contents of the report are: the name and address of the person from whom the currency was received; the amount of currency received; the date and nature of the transaction; and the identification of the person filing the report.<sup>12</sup>

### *Office of Foreign Assets Control (“OFAC”)*

While OFAC’s insurance industry regulations pre-date the Act, it seems that companies are being more closely scrutinized for their compliance with OFAC requirements following the events of September 11, 2001.<sup>13</sup> OFAC, an office of Treasury, administers and enforces sanctions programs used to accomplish foreign policy and national security goals. The sanctions programs are primarily against countries and groups of individuals, such as terrorists and narcotics traffickers.

OFAC has identified and named numerous foreign agents and front organizations, as well as terrorists, terrorist organizations, and narcotics traffickers, as Specially Designated Nationals and Blocked Persons, with a master list containing over 5,000 variations on names of individuals, governmental entities, companies and merchant vessels located around the world.


Transactions that in any way involve these individuals, entities or vessels are prohibited, and all property in which there is a direct or indirect interest of any of them is considered blocked or frozen. OFAC’s jurisdiction is virtually infinite, and there are criminal and civil penalties for violating OFAC’s regulations.

### *Conclusion*

The provisions of the Act will be costly to insurers in terms of both time and money. Given the world in which we live, the Act may be only the first installment on the debt all Americans owe for our liberty.

### *Endnotes*

1. Public Law 107-56 enacted on October 26, 2001. The full text of the law can be obtained at [www.access.gpo.gov/congress](http://www.access.gpo.gov/congress) by scrolling to Public and Private Laws, selecting 107th Congress and selecting Public Law 107-56.
2. 31 U.S.C.A. § 5312(a)(2)(M).
3. Public Law 107-56 §§ 352 and 326.
4. 67 Fed. Reg. 82, 21109-21127 (Monday, April 29, 2002). 67 Fed. Reg. 141, 48289-48299 (Tuesday, July 23, 2002). The Federal Register can be obtained at [www.access.gpo.gov/su\\_docs/fedreg](http://www.access.gpo.gov/su_docs/fedreg).
5. 67 Fed. Reg. 187, 60625-60630 (Thursday, July 26, 2002).
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. 67 Fed. Reg. 141, 48289-48299 (Tuesday, July 23, 2002).
11. Public Law 107-56 §365.
12. *Id.*

13. Foreign Assets Control Regulations and the Insurance Industry (July 26, 2001). The text of the regulations can be obtained at [www.treas.gov/ofac](http://www.treas.gov/ofac) by selecting Regulations by Industry and selecting Insurance. 

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