



**ARKANSAS INSURANCE DEPARTMENT
LEGAL DIVISION**

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BULLETIN NO. 11-2002

TO: ALL INSURERS, NAIC, TRADE ASSOCIATION, AND OTHER INTERESTED PARTIES
FROM: ARKANSAS INSURANCE DEPARTMENT
SUBJECT: USA PATRIOT ACT OF 2001

On October 26, 2001, President Bush signed into law the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001"¹ (the Act). This law, enacted in response to the terrorist attacks of September 11, 2001 strengthens our Nation's ability to combat terrorism and prevent and detect money-laundering activities.

The purpose of this Bulletin is to advise persons or entities regulated by Arkansas Department of Insurance of important new responsibilities under the Act. In particular, Section 352 of the Act amends the Bank Secrecy Act ("BSA")² to require that all financial institutions establish an anti-money-laundering program, and Section 326 amends the BSA to require the Secretary of the Treasury (Treasury) to adopt minimum standards for financial institutions regarding the identity of customers that open accounts to detect money-laundering activities.

Section 352 of the Act became effective on April 24, 2002, but its application to insurance companies (and the other new business sectors added to BSA's definition of financial institutions) has been deferred by Treasury for a period of no more than 6 months (October 24, 2002). The complexities of requiring anti-money laundering programs for all these financial institutions (including insurance companies) demand that Treasury carefully review each industry in this regard before issuing regulations that can be tailored to each industry.

Section 352 of the act requires the establishment of an anti-money laundering program, including, at a minimum:

- The development of internal policies, procedures, and controls; these should be appropriate for the level of risk of money laundering identified.
- The designation of a compliance officer; the officer should have appropriate training and background to execute their responsibilities. In addition, the compliance officer should have access to senior management.
- An ongoing employee training program; a training program should match training to the employees' roles in the organization and their job functions. The training program should be provided as often as necessary to address gaps created by movement of employees within the organization and turnover.
- An independent audit function to test the programs. The independent audit function does not require engaging outside consultants. Internal staff that is independent of those developing and executing the anti-money laundering program may conduct the audit.

Treasury's April 23, 2002 notice of rulemaking announces that "Treasury and FinCEN³ have been examining the money laundering risks associated with insurance products and will issue in the near future a proposed rule governing the establishment of anti-money laundering programs by insurance companies."

¹ The full text of the law can be obtained at www.access.gpo.gov/congress. Scroll to "Public and Private Laws", select 107th Congress, and select Public Law 107-56.

² Codified in subchapter II of chapter 53 of title 31, U.S. Code.

³The Department of the Treasury Financial Crimes Enforcement Network.

The regulation may borrow from the anti-money-laundering compliance program rule recently proposed by the NASD for broker-dealers.⁴ Treasury and FinCEN have also emphasized that the deferral of the requirement to establish anti-money-laundering programs does not in any way relieve any business from the existing requirements in 31 U.S.C. § 5341 and 26 U.S.C. § 6050I that they report transactions in cash or currency, or certain monetary instruments, that exceed \$10,000.

As part of its rule making process, Treasury is currently determining the extent to which other insurance entities will be considered financial institutions for purposes of the regulation. It is anticipated that the regulation could cover all persons and entities engaged in the business of insurance, including underwriters, brokers, agents, and managing general agents, and may also include medical service plans, hospital service plans, health maintenance organizations, prepaid limited health care service plans, dental, optometric and other similar health service plans.

Anti-money laundering programs are expected to be developed using a risk-based approach. Development of a money-laundering program should begin with identification of those areas, processes, programs that are susceptible to money-laundering activities. The practices and procedures implemented under the program should reflect the risks of money-laundering given the entity's products, methods of distribution, contact with consumers and forms of customer payment and deposits.

Section 326 of the Act amends the BSA to require that Treasury issue regulations setting forth minimum standards for financial institutions regarding the identity of their customers in connection with the opening of an account. This program must set forth customer identity verification and documentation procedures as well as procedures the insurer will employ to notify its customers about this requirement and determine whether the customer appears on government lists of known or suspected terrorists or terrorist organizations. A financial institution's customer identification program must also include procedures for notifying its customers about its program. Final regulations regarding this requirement are to be issued by the Department of the Treasury by October 24, 2002. Proposed regulations will be published in the Federal Register⁵ later in the year. Insurance entities that are subject to the regulation will be required to comply when the final Treasury regulations become effective.

In addition to compliance with Section 352 of the Act, insurers and licensees should become familiar with the "Arkansas Criminal Use of Property and/or Laundering Criminal Proceeds Act of 1993" [Codified at Ark. Code. Ann. §5-42-201]. While there are no reporting requirements under state law, it is a Class C felony to knowingly conduct a transaction involving criminal proceeds with the intent to avoid reporting under state or federal law. A Class C Felony is punishable by a maximum fine of \$10,000 and/or imprisonment of not less than three (3) years nor more than ten (10) years.

For additional information or questions regarding:

- This bulletin may be directed to insurance.fraud@mail.state.ar.us of the Arkansas Insurance Department.
- State requirements on the reporting of suspected money-laundering activities should be directed to the Fraud Division of the Arkansas Insurance Department at Insurance.Fraud@mail.state.ar.us.
- The Act may be directed to Gary W. Sutton, Senior Banking Counsel, Department of Treasury at (202) 622-1976 or to Linda L. Duzick, Office of Thrift Supervision, serving as insurance industry liaison for the Department of the Treasury at (202)906-6565 or Linda.duzick@ots.treas.gov.

MIKE PICKENS
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⁴ 67 CFR 8565 (February 25, 2002)

⁵ The Federal Register website address is www.access.gpo.gov/nara.

