Arkansas Insurance Department

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BULLETIN NO. 5 -2006

TO: All Domestic Insurance Companies, Health Maintenance Organizations, Hospital and Medical Service Corporations, National Association of Insurance Commissioners, Trade Organizations, and Other Interested Parties

FROM: Arkansas Insurance Department

SUBJECT: Insurance Companies Required to Establish Anti-Money Laundering Programs and File Suspicious Activity Reports

Bulletin 11-2002 advised persons and entities regulated by the Arkansas Insurance Department of important new responsibilities under the USA Patriot Act. In November 2005, the Financial Crimes Enforcement Network (FinCEN) announced the promulgation of two (2) final rules that impact some insurance companies. Under the new rules, certain U.S. insurance companies are required to both establish anti-money laundering programs and file Suspicious Activity Reports. Insurance companies subject to these rules must establish an anti-money laundering program no later than May 2, 2006, and start filing Suspicious Activity Reports on transactions occurring after May 2, 2006.

The final rules apply to insurance companies that issue or underwrite certain products that present a high degree of risk for money laundering, the financing of terrorism, or other illicit activity. The insurance products subject to these rules include:

- Permanent life insurance policies, other than group life insurance policies;
- Annuity contracts, other than group annuity contracts;
- Any other insurance products with cash value or investment features.

At a minimum, insurance companies subject to the rule requiring an anti-money laundering program must establish a program that comprises four basic elements:

- A compliance officer who is responsible for ensuring that the program is implemented effectively;
- Written policies, procedures, and internal controls reasonably designed to control the risks of money laundering, terrorist financing, and other financial crime associated with its business;
- Ongoing training of appropriate persons concerning their responsibilities under the program; and
- Independent testing to monitor and maintain an adequate program.

Anti-Money Laundering Program Requirement for Certain U.S. Insurance Companies

Insurance producers are not required to have separate anti-money laundering programs. However, as an integral part of the insurance industry, insurance producers must be integrated into an insurance company's anti-money laundering program and be monitored for compliance. An insurance company's anti-money laundering program must also include procedures for obtaining relevant customer-related information for an effective program, either from its producers or otherwise.

Importantly, an insurance company that is subject to the requirement to have an anti-money laundering program under another provision of the Bank Secrecy Act is not required to establish a duplicate program under this rule. For example, an insurance company may also be a registered broker-dealer in securities. The company should evaluate the extent to which its existing anti-money laundering program should be revised to appropriately address the risks of doing business in insurance products covered by this rule. Under the USA PATRIOT Act, financial institutions that have an obligation to establish anti-money laundering programs are able to participate in the sharing of information between financial institutions concerning terrorist financing and/or money laundering. Once an insurance company subject to the final insurance company anti-money laundering program rule has established its anti-money laundering program, it may file a certification for purposes of Section 314(b) of the USA PATRIOT Act.

Suspicious Activity Reports Filing Requirement for Certain U.S. Insurance Companies

The requirement to identify and report suspicious transactions applies only to an insurance company and not its producers. Insurance companies are required to obtain customer information from all relevant sources, including its producers, and to report suspicious activity based on such information.

A new Suspicious Activity Report form for insurance companies (FinCEN Form 108 – Suspicious Activity Report by Insurance Companies) will replace the procedure of checking the suspicious transaction box on Form 8300 (Report of Cash Payments Over $10,000 Received in a Trade or Business). Consequently, it may be appropriate for an insurance company to file a Form 8300 as well as file FinCEN Form 108 when circumstances surrounding the receipt of cash are suspicious.

Until FinCEN Form 108 is published and effective, insurance companies may use FinCEN Form 101 (Suspicious Activity Report by the Securities and Futures Industries) to report any suspicious transactions. The words "Insurance SAR" should be entered on the first line of the narrative section.

The threshold amount obligating an insurance company to report suspicious transactions that are conducted or attempted by, at, or through the institution is at least $5,000 (whether in an individual transaction or in aggregate) in funds or other assets. This threshold amount is not limited to insurance policies whose premiums meet or exceed $5,000; rather, it includes a policy

in which the premium or potential payout meets the threshold. Nevertheless, insurance companies are encouraged to voluntarily file Suspicious Activity Reports, if appropriate. An insurance company that files a Suspicious Activity Report voluntarily is protected from civil liability to the same extent as a company filing a Suspicious Activity Report that is required under this final rule.

Both rules and a series of Frequently Asked Questions can be found on FinCEN's website at http://www.fincen.gov/ins.htm. Financial institutions may also call the FinCEN Regulatory Helpline at 800-949-2732 for assistance.

(signed by Julie Benafield Bowman)
JULIE BENAFIELD BOWMAN
INSURANCE COMMISSIONER

(signed April 27, 2006)
DATE