



January 3, 2006

The Honorable William J. Fox
Director
Department of the Treasury
Financial Crimes Enforcement Network
Regulatory Policy and Programs Division
P.O. Box 39
Vienna, Virginia 22183

Attention: PRA Comments – SAR-Insurance Companies Form; 70 Fed. Reg. 66895
(November 3, 2005).

Dear Mr. Fox:

The American Bankers Association (ABA) and the American Bankers Insurance Association¹ (ABIA) appreciate the opportunity to comment on the proposed new form “Suspicious Activity Report by Insurance Companies” (SAR-IC).

The ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, and savings banks – makes ABA the largest banking trade association in the country.

ABIA’s membership includes banking institutions engaged in the business of insurance and other organizations, including insurance underwriters, which provide insurance products or services to banks.

Basis to Revise Estimate of Regulatory Burden

Although the information collection represented by the proposed SAR-IC is mandated by 31 CFR 103.16, no estimate of the reporting burden—as opposed to the record-keeping burden—was included as part of that final rule. Instead, it appears that this notice is intended to cover the reporting burden associated with completing the proposed SAR-IC. FinCEN’s estimate is an average of 2 hours per response, i.e., for each form filed. This translates to less than 1 ¼ full-time staff for

¹ The American Bankers Insurance Association’s mission is to develop positions and strategies on bank-insurance related matters, represent those positions before state and federal governments and in the courts, and support bank-insurance related programs and activities through research, education and peer group information sharing.

the covered respondent industry as a whole since only 1,200 total reports—or one per respondent—is estimated to be filed.

While ABA, ABIA and their respective members accept the responsibilities that accompany insurers joining the obligation shared by other financial institutions to file suspicious activity reports, for insurance companies this challenge is a new information collection. As such and in order to present a more realistic representation of the industry's undertaking, the SAR-IC burden estimate should include the time spent on establishing the underlying systems and conducting relevant training to assure the suspicious activity report occurs when necessary and is filled out completely and accurately. Although there may be small risk of money laundering or terrorist financing actually occurring in the numerous insurance transactions covered by the rule—and consequently, as estimated, only one SAR per company may be filed a year, all of the effort to prepare staff and systems to handle this possibility is translated to hours spent on a limited number of reports. In other words, we are investing in a large infrastructure to support a regime of limited reporting all in furtherance of the important goal of combating money laundering or deterring terrorist financing.

Under the Paperwork Reduction Act of 1995, “burden” constitutes a much wider range of activities than simply completing the form and associated recordkeeping.² Burden also encompasses:

1. Training personnel to properly collect the information and to understand the complexities of money laundering and terrorist financing.
2. Design, procurement and operation of data collection, data management, data reporting systems necessitated by the collection of information.
3. Time, effort and other resources to perform all required tasks, including completion and fulfillment of the information request, as well as to certify the accuracy and/or reliability of information provided.
4. Transmitting or otherwise disclosing the information to the federal agency requesting the information.

Most importantly, in the first years of data collection, insurers must conduct extensive training from front-line customer representatives and agents, through the administrative personnel handling the paperwork, to the supervisors managing the entire process. Although our membership has an advantage in familiarity with SAR processing due to our banking connections, insurers generally are not that fortunate. As we remark elsewhere, the technical knowledge and experience necessary to properly detect and report relevant detail concerning the suspicious activity sought by the form calls for a substantial learning curve aided by focused agency guidance that does not yet exist for the insurance context.

As the Paperwork Implementing Guidance recites³, “training personnel...means time and money spent by respondents—usually when the respondent must carry out the collection through staff, contractors, or other agents—in training those other

² See, Office of Mgmt. & Budget, The Paperwork Reduction Act of 1995: Implementing Guidance for OMB Review of Agency Information Collection 44 – 53 (Aug. 16, 1999)(“Paperwork Implementing Guidance”).

³ *Id.* at p. 46.

agents about how to comply with the collection. Burden includes whatever time or money resources are necessary to ensure that the agents understand enough about the nature of the program and policy context to respond to the collection of information, as well as the resources spent in training about actual reporting....” This clearly speaks to the current situation where the collection obligation rests with insurers, but as FinCEN recognizes, the information contained in the collection will compel the involvement and cooperation of independent agents and brokers specifically trained to the task⁴.

Arriving at a meaningful estimate of this training investment is difficult, especially where an industry-specific curriculum has not yet been devised. Although there may be existing programs designed to detect fraud, the typologies for conducting money laundering and terrorist financing through insurance transactions implicate different sensitivities. Consequently, suppose we assume that each insurance agent or responsible person in the industry takes a 3 hour course on detecting suspicious activity in the insurance transaction context, the proper means of communicating supporting detail of that detection to responsible insurance company officials, and where appropriate to their role, the manner of filling-in and transmitting the SAR-IC form correctly. The total of this training distributed over the estimated 1,200 insurer respondents will yield far greater hourly burden estimates than contemplated in this notice—and doesn’t begin to cover the expense of contracting for the training.

In addition, insurance companies will have to design and implement data collection and reporting systems. These systems must also entail security for and processing across principal/agent lines of communication. These new systems would likely cost insurers numerous staff hours for maintaining and using the systems. Again this fixed cost must be attached to the limited number of reports covered by the estimate—and still doesn’t begin to include the expense of acquiring relevant software.

With respect to variable time spent or costs incurred in reporting on a single suspicious activity, the estimate must include not only the final filling-out of the form itself but the intermediate detection, internal escalation, investigation and vetting of the flagged activity. The fact that the insurer will often have to work with alerts from non-employee agents translates to additional time to communicate facts up-and-down channels that cut across separate corporate organizations before a suspicious activity situation has been sufficiently investigated and confirmed to warrant confidence in its reporting and assure accuracy in that reporting.

Taking all of these aspects of burden into consideration in implementing this admittedly new collection, especially giving due consideration to the necessary

⁴ See 31 CFR 103.16(b)(3)(i) and also 70 Federal Register 66763 - 4 (November 3, 2005) (“... because insurance agents and brokers are an integral part of the insurance industry due to their direct contact with customers, the final rule requires an insurance company to establish and implement policies and procedures reasonably designed to obtain customer information necessary to detect suspicious activity from all relevant sources, including from its agents and brokers, and to report suspicious activity based on such information.... Insurance agents and brokers will play an important role in the effective operation of an insurance company’s obligation to report suspicious transactions.”)

training of numerous employees and non-bank agents, we urge FinCEN to re-evaluate the basis for, and calculation of, its burden estimate to properly reflect the true size of the underlying effort represented by collecting information to complete this six page form.

Additional and Expanded SAR Activity Reviews

ABA and ABIA would like to take this opportunity to commend FinCEN for its helpful publications analyzing money laundering trends. Given the success of the SAR Activity Review for other financial institutions, we strongly recommend that FinCEN provide extensive guidance on particular types of suspicious activity that may take place in the insurance industry.

The obligation to file the SAR-IC rests with insurers but many insurance transactions are performed by the insurer's agents. Accordingly, the usefulness of information collected by banks, acting as agents for insurers, will increase or decrease depending upon the comprehensiveness of the instructions FinCEN provides to insurers and to banks acting on their behalf.

Since the official issuance of the Suspicious Activity Report in 1996, financial institutions have grappled with the challenge of trying to accurately report potential criminal activity. Financial crime is, by nature, extremely complicated and most SAR filers are not trained in either law enforcement or sophisticated financial crime investigative methods. Therefore, simply listing potential crimes financial institutions are expected to detect, without further explanation, may have resulted in less than accurate filings.

Similarly, if FinCEN does not issue guidance for insurers, SAR-IC filings could suffer the same qualitative problems. For example, it would be helpful if FinCEN provided examples of what constitutes an "unusual" premium payment or "excessive" insurance. Similarly, for companies that have not previously been required to file SARs, it would be helpful if FinCEN set forth the indicia of crimes such as "Identity theft" and "Money structuring."

Your consideration of our proposed estimate of burden and our recommendation is appreciated.

Respectfully submitted,



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