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January 3, 2006

Department of the Treasury
Financial Crimes Enforcement Network
Regulatory Policy and Programs Division
P.O. Box 39
Vienna, VA 22183
Attention: PRA Comments—SAR-Insurance Companies Form

Dear Sirs/Mesdames:

On behalf of our member companies, the American Council of Life Insurers submits comments in response to the notice and request for comments on a proposed new form, "Suspicious Activity Report by Insurance Companies (SAR-IC)," that was published in the Federal Register on November 3, 2005. The proposed SAR-IC was released for public comment together with final regulations, also published on November 3, 2005, setting forth standards that insurance companies must meet in establishing anti-money laundering programs and reporting suspicious transactions.

ACLI represents three hundred fifty-six (356) member companies operating in the United States. These 356 member companies account for 80 percent of total assets, 78 percent of the life insurance premiums, and 84 percent of annuity considerations in the United States. Most of our member companies are actively engaged in the business of selling products subject to the new requirements and will be directly affected by them.

ACLI appreciates the substantial time and effort that was devoted by the Treasury Department and FinCEN in issuing the regulations and proposed SAR-IC form. In April 2002, the Treasury Department and FinCEN deferred the anti-money laundering requirement for insurance companies in order to study the insurance industry and consider how anti-money laundering controls could best be applied to the industry. Many of our member companies nonetheless initiated anti-money laundering programs in anticipation of new requirements, and their experiences, as well as those of others, were the basis of ACLI's detailed recommendations to the Treasury Department and FinCEN on anti-money laundering programs and the SAR reporting standards for insurance companies.

Consideration of these recommendations by the Treasury Department and FinCEN has yielded regulations that provide timely and critical guidance for life insurers. Specifically, we appreciate the decisions to exclude products and activities with little or no risk of money laundering and to identify “red flags” to which insurance companies may refer in identifying reportable transactions and providing training to employees. ACLI also appreciates the development of a SAR specifically for insurance companies (*i.e.*, the SAR-IC) that can be used in place of the current form originally developed for use by the securities and futures industries (*i.e.*, the SAR-SF).

Although the final regulations provide guidance on many of the major issues that may arise, ACLI believes that certain aspects of the proposed SAR-IC form require further clarification or modification. In the first section of this letter, we address these concerns in a section-by-section analysis of the proposed form. It is also apparent, however, that there are more general issues on which further guidance would be appropriate. In the second section, we briefly identify these issues.

SECTION I: FinCEN Form 108—Suspicious Activity Report by Insurance Companies (SAR-IC)

Boxes 1 and 1a—Clarification is needed as to the distinction between check boxes 1 and 1a.

Part I—Subject Information

Box 15—A check box for “Corp/Partnership/Trust Documentation” should be included as it is on the SAR-SF. A check box for a National Identity Card, for use with subjects who are foreign nationals, should also be included.

Box 16—Since foreign nationals may be “subjects” on the form, the entries for telephone numbers should allow the insertion of country codes.

Part II—Suspicious Activity

Box 18—This box assumes that SARs need only be filed for money laundering or terrorist financing. It should either be deleted, or a check box for “other” should be included.

Box 20—Clarification is needed as to the calculation of the total dollar amount involved. For example, in a structured transaction, is the appropriate amount the payments or the face amount of the policy being supported?

Box 21c—We recommend including explanatory text in Part V to describe the intended scope of the word “other”.

Box 22—This box may be unnecessary. If the form of payment is material to the report, then it will be described in the narrative. If it is not material, time should not be spent identifying the particular form of payment. If this box is retained, boxes “c” and “d” should be replaced with the term “cash equivalents”. As an alternative to this approach, boxes for money orders and cashier’s checks could be included, as well as a definition of the scope of the term “negotiable instrument”.

Box 23—Categories that are missing from Box 23 that might be useful include:

- Computer intrusion
- Forgery
- Embezzlement/theft
- Wire fraud
- Suspicious early partial surrenders,
- Deposits followed by suspicious withdrawals
- Suspicious withdrawals with high surrender charges
- Suspicious payments by unrelated third parties
- Suspicious transactions (wire or other) from a foreign country.

Box 23b—The term “cash” should be deleted. It will either be selected in Box 22 (if it is retained) or described in the narrative. Further, as currently worded, the phrasing could be interpreted to mean that, if the payment is not paid in cash, premium activity would not be considered unusual.

Box 23e—Clarification is needed as to the definition of “excessive insurance”. A company typically will not issue more insurance than is justified, but absent other circumstances, a person’s interest in purchasing as much insurance as possible is neither unusual nor suspicious.

Box 23g—This category does not lend itself to a check-box approach. Significantly, the same issue exists for investment products, but a similar box is not included on the SAR-SF.

Box 23i—This category is redundant in light of Box 23h. In the event that the category is retained, clarification is needed as to the definition of “multiple checks” since many insurance and annuity products may be paid for over the course of several years.

Box 23l—This category should be changed from “transfer to an unrelated third party” to “suspicious transfer, withdrawal, or loan to (or payments made by) an unrelated third party”.

Box 23m—This category should be changed to “suspicious insurable interest”.

Box 23n—There is no Box 23n; the categories skip from Box 23m to Box 23o.

Box 23o—This category should be changed to “suspicious designation of a beneficiary/assignee”. For example, designating a trust for the benefit of a pet may be unusual, but not necessarily suspicious for purposes of the new regulations.

Part III—Reporting Financial Institution Information

Box 24—Clarification is needed on procedures in the event that the jointly-filing institutions are required to report on different forms (*i.e.*, one files a SAR-IC and another files a SAR-SF) or disagree on responses in Parts I and II.

Box 32f—The inclusion of check boxes for FDIC, NCUA, OTS, and CFTC is unnecessary and confusing. An “other” box should be included.

Box 33—Since “closed” is not an insurance term, the use of the words “surrendered, lapsed, or otherwise not in force” would be more appropriate. Also, this box could be combined with Box 34.

Boxes 33 and 34—These boxes should be moved to Part II of the form since they relate to suspicious activity information rather than reporting financial institution information.

Boxes 35b and f—In tandem with the instructions, the use of the terms “agent” and “broker” may imply a formal association that does not, in fact, exist between a subject and the reporting financial institution. The term “producer” may be more appropriate and certain of meaning due to its usage in the NAIC Model Licensing Act.

Box 35c—The inclusion of a check box for “appraiser” is unnecessary and confusing since it applies to property and casualty companies and products which are not subject to the final regulations.

Box 35g—The term “customer” is overly broad since the it could pertain to contract owners, insureds, beneficiaries, payors, and annuitants.

Boxes 36, 41, 46, and 51—“Office” should be used instead of “branch office” so that a Home Office can be identified as the location, if appropriate.

Part IV—Contact for Assistance

Box 56—Boxes should be added for the name of a contact person and their e-mail address.

Part V—Suspicious Activity Information--Narrative Instructions

Item “P”—Clarification is needed as to the definition of a “transfer company”.

Item “R”—This instruction appears to reference information in boxes 33 and 34 rather than boxes 24-29.

Item “Y”—For greater clarity, the word “when” should be changed to “date”.

FinCEN Form 108a—Suspicious Activity Report Instructions

Definition of “Annuity”—The definition references an annuity with a term certain payout (*i.e.*, “for a period of time”), but not annuities with a lump sum or life expectancy payout.

Definition of “Group annuity contract”—The definition does not distinguish group pension contracts from group contracts where certificates are individually solicited. A clearer and more recognized alternative may be available in the standard non-forfeiture law for group annuities. As noted below in Section II, additional material with respect to this issue is expected to be submitted at a later date.

Definition of “Permanent life insurance policy”—The term “indemnify” in this definition does not have a meaningful application in the context of life or annuity products. The term is more commonly used in connection with non-life insurance products.

Legal Disclaimers—The instructions state that the Part V Narrative is the most important part of the form and should not include “legal disclaimers.” Examples of “legal disclaimers” should be provided to assist non-attorneys who may complete the form.

General Observations on the Proposed SAR-IC Form

- Other SAR forms include a section for other law enforcement contact, and ACLI recommends adding such a section to the SAR-IC.
- In the notice and request for comments, the burden for completing the SAR-IC form and maintaining required records is estimated to be an average of 2 hours per response. The experience of many of our member companies with other SAR forms suggests that this estimate is unrealistically low. Information gathering and consultation with external sales staff, along with supervisory review and editing, consumes significantly more than 2 hours each time. Indeed, the burden is expected to be even greater for the SAR-IC form in order to determine whether the transaction under review “has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the insurance company knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.”

- In the notice and request for comments, an estimated total number of SAR-IC forms expected to be filed annually is 1,200. Given the activities listed on the SAR-IC from item 23a through 23q, this number appears to be unrealistically low.

SECTION II: Recommendations for Additional Guidance

In addition to specific comments on the proposed SAR-IC, our member companies have identified certain issues, several of which are listed below, for which guidance would be appropriate. Additional materials with respect to each of these issues may be submitted at a later date.

1) **Due Date of SAR-IC Filings** The proposed SAR-IC is to be filed no later than 30 calendar days after the date of the initial detection by the life insurer of facts that may constitute a basis for filing a SAR-IC. However, the time at which an initial detection of the facts occurs may differ from the time at which there is an initial detection that these facts are suspicious and thus subject to reporting. ACLI recommends that the SAR-IC instructions clarify that “initial detection” refers to the time at which the life insurer knows or has reason to know that a suspicious activity has been detected.

2) **Definition of “Group annuity contract”** As noted above in Section I, the definition in the instructions does not distinguish group pension contracts from group contracts where certificates are individually solicited. A clearer and more recognized alternative may be available in the standard non-forfeiture law for group annuities. Guidance will be needed as to the proper application of the new requirements to these group contracts.

3) **Integration of Agents into Insurer’s SAR-IC Reporting** The final SAR regulation and the proposed SAR-IC form require a life insurer to obtain all relevant information necessary from its agents and brokers for purposes of filing suspicious activity reports. While ACLI acknowledges the position of the Treasury Department and FinCEN in this matter, it remains an obligation that, as noted in ACLI’s comment letter on the proposed regulations, is unprecedented in the life insurance industry and complicated by the multiplicity of distribution channels through which our products are sold and over which life insurers currently may have little direct legal control. Guidance will be needed to acknowledge and confirm the validity of integration processes developed by life insurers that comply with the new regulations.

4) **Sharing of SARs within an Insurer’s Global Operations** While life insurers must increasingly operate in the global marketplace, their products remain ones that are uniquely sold in large measure on a person-to-person basis. As a result, the effectiveness of a life insurer’s anti-money laundering program can be dramatically enhanced by integrating its international anti-money laundering program with that set forth in the new

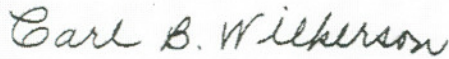
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regulations. Doing so ensures that the insurer has access to all relevant information about potential risks. However, concerns have been raised regarding whether the sharing of SAR filings with corporate affiliates outside of the U.S. is permitted. Guidance is needed with regard to the integration and coordination of a life insurer's international anti-money laundering programs with the standards set forth in the new regulations and reportable on the proposed SAR-IC.

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We look forward to the opportunity to meet with you to discuss these comments, including plans for the development of additional guidance.

Sincerely,



Carl B. Wilkerson



Lisa Tate

cc: D. Scott Parsons
Charles B. Klingman
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Alan Cox