NATIONAL ASSOCIATION OF INSURANCE & FINANCIAL ADVISORS
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November 25, 2002

James F. Sloan
Director
FinCEN
P.O. Box 39
Vienna, VA 22183

ATTN: Section 352 – Insurance Company Regulations

Dear Director Sloan:

These comments relating to the Financial Crimes Enforcement Networks' (FinCEN) proposed anti-money laundering compliance rule for insurance companies are submitted on behalf of the National Association of Insurance and Financial Advisors ("NAIFA"). NAIFA (formerly the National Association of Life Underwriters) is a federation of nearly 1,000 state and local associations representing almost 80,000 life and health insurance agents and investment advisors. Originally founded in 1890, NAIFA is the nation's oldest and largest trade association of insurance agents and financial advisors. NAIFA's mission is to improve the business environment, enhance the professional skills and promote the ethical conduct of agents and others engaged in insurance and related financial services who assist the public in achieving financial security and independence.

These comments raise two issues. First, we support FinCEN's decision to apply anti-money laundering compliance program requirements to insurance companies and only indirectly to agents and brokers. Second, we urge FinCEN to clarify that there can be flexibility in the training provisions of compliance programs so that agents and brokers do not need to expend time and money on duplicative training sessions.

1. The Proposed Rule Makes the Right Parties Responsible for Compliance Programs

We would like to commend FinCEN for putting anti-money laundering compliance responsibilities in the right place. Insurance companies – as opposed to agents and brokers – are in the best position to monitor money laundering risks. Insurers are also in the best position to bear the administrative costs of compliance. We recognize, as did FinCEN in its proposed rule, that agents and brokers will need to cooperate with insurers to help carry out aspects of the insurers' anti-money laundering compliance programs. We expect agents and brokers (both captive and independent) to carry out these responsibilities and do them well, but they should not also be tasked with the administrative cost and burden of implementing their own, separate

compliance systems including employing their own compliance officers and independently auditing their compliance. FinCEN made the right decision by not imposing these unnecessary burdens on agents and brokers.

Requiring insurance companies, rather than agents and brokers, to develop and implement compliance programs is the right regulatory approach because only insurance companies have access to all of the information that may raise money laundering concerns. In particular, after the initial agreement and premium payment, business is often transacted directly between the insurance company and the policyholder. Therefore, transactions such as requests to cancel the policy and receive a refund or take out a policy loan may occur without the agent's or broker's awareness. These transactions, which may be the most telling indicators of potential money laundering, must be communicated to, and processed by, insurers. Accordingly, as FinCEN has proposed, insurance companies, not agents and brokers, should be responsible for anti-money laundering compliance programs.

In addition, FinCEN is correct in pointing out in its proposed rule that insurance companies are likely to use their contractual relationships to require agents and brokers to take on certain compliance responsibilities. For example, insurers are likely to ask agents and brokers for information regarding insureds in order to assess the potential for money laundering risks. These compliance responsibilities should be reasonably designed as specifically required by Section 103.137(b) of the proposed regulation. Insurers already have numerous compliance and best practices guidelines that independent agents and brokers follow in order to continue doing business with them. The same structural model should work for anti-money laundering compliance responsibilities.

2. <u>FinCEN Should Clarify the Flexibility in Training Requirements</u>

The proposed rule requires that insurers provide for on-going training of appropriate persons. Given the role agents and brokers play in insurance transactions, it is likely they will need to receive training. Such training will help agents and brokers carry out their anti-money laundering responsibilities. Some independent agents and brokers, however, sell policies for many different companies. FinCEN should encourage the industry to work together to design acceptable training programs and indicate that anti-money laundering training to fulfill this requirement could be offered by outside educational organizations, non-profits, or trade associations. Individual companies, then, would not need to sustain duplicative and unnecessary costs to develop and implement identical (or virtually identical) training programs, and agents and brokers would not be required to attend duplicative training sessions. Instead, insurers could simply inform agents and brokers of their compliance policies and check to ensure that their agents and brokers have received acceptable anti-money laundering training.

These clarifications regarding the proposed rule's training requirements would significantly decrease compliance costs for agents and brokers.

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FinCEN's decision to apply anti-money laundering compliance program requirements to insurance companies and only indirectly to agents and brokers is sound. It will facilitate industry compliance without overburdening NAIFA members, who are typically owners of small businesses, with unnecessary compliance costs. To ensure that the goals of the proposed rule are reached without duplicative efforts and costs, we urge FinCEN to suggest that the industry work cooperatively to develop appropriate training programs.

Thank you for your consideration.

Sincerely,

David A. Winston
Vice President – Government Affairs