Anti-Money Laundering Program and Suspi

part of their business. For example, a tax-exempt organization that offers charitable gift annuities, as defined in section 501(m)(5) of the Internal Revenue Code, that would not otherwise fall within the definition of an insurance company, would not be considered an insurance company for purposes of the final rule.

If an insurance company that is not presently issuing or underwriting a covered product should do so in the future, the insurance company would then become subject to the rule (but only to the extent of its business relating to covered products). Conversely, if an insurance company ceases issuing or underwriting covered products, the insurance company would no longer be subject to the rule.

An insurance company that is registered with the Securities and Exchange Commission as a broker-dealer in securities would not be required to establish a duplicate program under the final rule for insurance companies. Broker-dealers in securities currently are subject to an independent anti-money laundering program obligation under our regulations, 31 CFR 103.120; therefore, the insurance company would not be required to establish a separate anti-money laundering program in order to comply with the final rule, as long as it has established an anti-money laundering program pursuant to that requirement and complies with the program.[1] However, the company should evaluate the extent (if any) to which its existing anti-money laundering program should be revised to appropriately address the risks of doing business in covered insurance products.

3. What are "covered products"?

For purposes of the final insurance company rule, the term "covered product" is defined to mean:

A permanent life insurance policy, other than a group life insurance policy;
An annuity contract, other than a group annuity contract; and
Any other insurance product with cash value or investment features.

The definition incorporates a functional approach, and encompasses any insurance product having the same kinds of features that make permanent life insurance and annuity products more at risk of being used for money laundering, *e.g.*, having a cash value or investment feature. To the extent that term li

4. Which insurance products are not "covered products" pursuant to the rule?

Because they pose a lower risk for money laundering, the following products are not defined as "covered products" in the final rule:

group insurance products
products offered by charitable organizations, *e.g.* charitable annuities
term (including credit) life, property, casualty, health, or title insurance
reinsurance and retrocession contracts.

Contracts of indemnity and structured settlements (including workers' compensation payments) are not within the definition of "covered products" for purposes of the final rule.

5. Does the final rule require insurance agents and brokers to establish anti-money laundering programs?

No. Insurance agents and brokers are not required by the final rule to have separate anti-money laundering programs. However, insurance agents and brokers are an integral part of the insurance industry due to their contact with customers. Insurance agents and brokers typically are involved in sales operations and are therefore in direct contact with customers. As a result, the agent or broker will often be in a critical position of knowledge as to the source of investment assets, the nature of the clients, and the objectives for which the insurance products are being purchased. Agents and brokers have an important role to play in assisting the insurance company to prevent money laundering. Therefore, the final rule requires each insurance company to integrate its agents and brokers into its anti-money laundering program and to monitor their compliance with its program. The final rule also requires an insurance company's anti-money laundering program to include procedures for obtaining relevant customer-related information necessary for an effective program, either from its agents and brokers or otherwise.

The insurance company remains responsible for the conduct and effectiveness of its anti-money laundering program, which includes the activities of the agents and brokers that are involved with covered products. The insurance company must exercise due diligence, not only in the development of its anti-money laundering program and in the collection of appropriate customer and other information but also in monitoring the operations of its program, its employees, and its agents.

6. What are the requirements for an anti-money laundering program?

The final rule requires an insurance company that issues or underwrites covered products to develop and implement a written anti-money laundering program applicable to its covered products that is reasonably designed to prevent the insurance company from being used to facilitate money laundering. The program must be approved by

In all cases, however, the compliance officer should be thoroughly familiar with the operations of the business itself and with all aspects of your anti-money laundering program, as well as with the requirements of the Bank Secrecy Act and applicable Financial Crimes Enforcement Network forms, and should have read carefully all applicable documents we issue or post on our web page (www.fincen.gov

program, and the results of the independent testing should be put into writing, including any recommendations to senior management.

Independent testers should carefully consider all of the decisions made by the compliance officer, such as the determination of the level of risk faced by the insurance company for money laundering, the frequency of training, etc. The independent testing is intended to confirm that the program complies with the requirements of the rule and that the program functions as designed.

7. Is an insurance company required to train all of its employees in-house? What about training of brokers and agents?

An insurance company may satisfy the training requirement under its anti-money laundering program with respect to its employees, agents and brokers by directly training such persons or by verifying that those employees, agents and brokers have received adequate training by another insurance company or by a competent third party with respect to the covered products offered by the insurance company. For purposes of the rule, a competent third party can include, among others, another financial institution that is subject to an anti-money laundering program, such as a broker-dealer in securities or a bank.

An insurance company remains responsible for assuring compliance with the final rule and monitoring the effectiveness of its training program. The nature of the insurance company's review of a training program performed by another entity depends upon the facts and circumstances of the particular situation. For example, if the training is performed by another entity that has its own anti-money laundering program (such as a broker-dealer or bank), the insurance company's evaluation of the training program may be less stringent than if a third-party contractor performs the training. Mere certification of attendance at a program is insufficient; rather, evaluation of the substance of the training is essential.

8. What resources are available to help an insurance company to establish an adequate program?

The preambles to the final rules and these Frequently Asked Questions provide the foundation for the process of establishing an anti-money laundering program. Going forward, we will be issuing additional guidance to the industry. All such guidance will be posted on our website (www.fincen.gov). Additionally, we operate a Regulatory Helpline (1-800-949-2732), to provide answers to specific regulatory or compliance questions.

9. When must we implement our Anti-Money Laundering Program?

You will have 180 days from when the final rule is published in the *Federal Register* to implement your anti-money laundering program.

Some examples of "red flags" include, but are not limited to, the following: the purchase of an insurance product inconsistent with the customer's needs; unusual payment methods, such as cash, cash equivalents (when such a usage of cash or cash equivalents is, in fact, unusual), or structured monetary inst

The final rule imposes a direct obligation only on insurance companies, and not on their agents or brokers, for a number of reasons. First, whether an insurance company sells its products directly or through agents, we believe that it is appropriate to place on the insurance company, which develops and bears the risks of its products, the responsibility for guarding against such products being used to launder illegally derived funds. Second, insurance companies, due to their much larger size relative to that of their numerous agents and brokers, are in a much better position to shoulder the costs of compliance connected with the sale of their products. Finally, numerous insurers already have in place compliance programs and best practices guidelines for their agents and brokers to prevent and detect fraud. We believe that insurance companies largely will be able to integrate their obligation to report suspicious transactions into their existing compliance programs and best practices guidelines.

Insurance agents and brokers will play an important role in the effective operation of an insurance company's obligation to report suspicious transactions. By not placing an independent reporting obligation on agents and brokers, we do not intend to minimize their role. We intend to assess the effectiveness of the rule on an ongoing basis. If it appears that the effectiveness of the rule is being undermined by the failure of agents and brokers to cooperate with their insurance company principals, we will consider proposing appropriate amendments to the rule. We also expect that an insurance company, when faced with a non-compliant agent or broker, will take necessary actions to secure such compliance, including, when appropriate, terminating its business relationship with such an agent or broker.

Certain insurance agents and insurance brokers may be broker-dealers in securities with an independent obligation to report suspicious activity under another Bank Secrecy Act regulation.[4]

15. Are joint Suspicious Activity Report filings permissible?

Yes. In circumstances where two or more financial institutions subject to suspicious activity reporting requirements under the Bank Secrecy Act are in,1(ng require)-5.3(n,1sf7ssary4)0.5

company's records for a period of five years from the date of filing. An insurance company must also retain copies of reports (and supporting documentation) provided to it by its agents that are required to make reports by another provision in 31 CFR Part 103 when the agents and the company file a joint report regarding a transaction involving both companies.

A joint Suspicious Activity Report that is filed with us in the manner described above will be deemed to have been filed by each financial institution involved in the underlying transaction, thereby satisfying each financial institution's obligation to report suspicious activity. Financial institutions may share information pertaining to the transaction, as long as no persons involved in the transaction are notified. Such communications between financial institutions for the purpose of filing or determining whether to file a joint Suspicious Activity Report are protected by a safe harbor from civil liability pursuant to 31 U.S.C. 5318(g), as disclosures authorized under that section's implementing regulations and interpretative guidance.

In all such joint filings, only one of the filing institutions should be identified as the "filer" in the filer identification section of the form (unless the form accommodates multiple filers, as the Suspicious Activity Report for Insurance Companies will do). The Narrative section of the suspicious activity report must include the words "joint filing" and must identify the other financial institution or institutions on whose behalf the report is being filed (unless the form will accommodate multiple filers, in which case there is no need to include that information in the Narrative section).

16. If an insurance company files a Suspicious Activity Report voluntarily, will it be protected from civil liability?

Yes. Pursuant to 31 U.S.C. 5318(g)(3): "Any financial institution that makes a voluntary disclosure of any possible violation of law or regulation to a government agency …shall not be liable to any person under any law or regulation of the United States… or regulation of any State…for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure."

It is the intent of this provision of the Bank Secrecy Act to provide the greatest possible protection to financial institutions, in the form of a "safe harbor," to encourage the filing of Suspicious Activity Reports if appropriate.

17. May we disclose that a Suspicious Activity report was filed? What if we receive a civil subpoena?

There are statutory and regulatory prohibitions against the disclosure of information filed in, or the fact of filing, a Suspicious Activity Report whether the report is required or is filed voluntarily. Thus, insurance companies filing the proposed Suspicious Activity Report by Insurance Companies (or receiving a copy of filed joint Suspicious Activity Reports from another financial institution involved in the same

transaction) are specifically prohibited from disclosing that a Suspicious Activity Report has been filed or the information contained therein, except to appropriate law enforcement and regulatory agencies.

If you are served with any subpoena requiring disclosure of the fact that a Suspicious Activity Report has been filed or of a copy of the Suspicious Activity Report itself, except to the extent that the subpoena is submitted by an appropriate law enforcement or supervisory agency, you should neither confirm nor deny the existence of the Suspicious Activity Report. You also should immediately notify the Office of Chief Counsel at the Financial Crimes Enforcement Network (703-905-3590).

18. Certain financial institutions participate in information sharing pursuant to section 314(b) of the USA PATRIOT Act and Financial Crimes Enforcement Network regulations at 31 CFR 103.110. May insurance companies now participate in that information sharing?

Yes. Pursuant to 31 CFR 103.110(a)(2), information sharing between financial institutions concerning terrorist financing and/or money laundering is available to financial institutions that have an obligation to establish anti-money laundering programs. Once an insurance company subject to the 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 and 31 CFR 103.110.