



Independent Insurance Agents



Brokers of America, Inc.



**INSURANCE AGENT AND BROKER COMPLIANCE WITH THE
PATRIOT ACT ANTI-MONEY LAUNDERING REQUIREMENTS
AND
OFFICE OF FOREIGN ASSETS CONTROL REGULATIONS**

This FAQ is not intended to provide specific advice about individual legal, business or other questions. It was prepared solely as a guide, and is not a recommendation that a particular course of action be followed. If specific legal or other expert advice is required or desired, the services of an appropriate, competent professional should be sought.

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INTRODUCTION

Prior to and in the wake of the events of September 11, 2001, U.S. law makers and federal law enforcement agencies endeavored to enhance their ability to combat terrorism. This FAQ summarizes one federal law and one set of federal regulations intended to accomplish this goal, and their application to insurance agents and brokers.

The federal law covered in this FAQ is the United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“PATRIOT Act”), which became effective on October 16, 2001. To further its goal of suppressing terrorism, the PATRIOT Act established certain requirements to deter money laundering and suspicious business activity by terrorist organizations and their supporters. It amended the Bank Secrecy Act (“BSA”) and requires “financial institutions” to establish anti-money laundering programs and related due diligence policies, procedures, and controls reasonably designed to detect and report money laundering (see FAQ 2 for the definition of financial institutions under the PATRIOT Act). In addition, the PATRIOT Act strengthened existing requirements for financial institutions to report suspicious or large cash transactions.

Separately discussed in this FAQ are federal regulations promulgated by the Department of Treasury’s Office of Foreign Assets Control (“OFAC”) which prohibit U.S. companies and persons from doing business with specially designated nationals and blocked persons (“SDN”) (defined below in FAQ 13) and governments/entities that support terrorism or against which the U.S. has levied sanctions/embargo programs.

PATRIOT ACT

1. What is “money laundering”?

Money is “laundered” when financial assets obtained through illegal activities are invested or transferred into legitimate channels so they appear to be funds from legal sources, and the original, illegal source is hard or impossible to trace. Legitimate businesses can sometimes become unwitting participants in the money laundering process since the source of funds is often unknown to them.

2. What is the definition of “financial institutions” under the PATRIOT Act?

Under the PATRIOT Act, financial institutions are defined according to their function. The PATRIOT Act lists the various types of entities that are covered as financial institutions. In the definition, “insurance company” is one of those listed entities. In addition, the PATRIOT Act also allows the Department of the Treasury to require compliance by “any director, officer, employee, or agent of any financial institution.” (Emphasis added).

3. So, does the PATRIOT Act apply to insurance agents and brokers?

Not directly. In a final rule that went into effect on May 2, 2006 (<http://www.fincen.gov/amlforinsurancecompany.pdf>), the Treasury Department specifically exempted insurance agents and brokers from the requirements of the anti-money laundering compliance programs under the PATRIOT Act as they relate to provisions applicable to insurance companies. This was done by excluding agents and brokers from the definition of “insurance company” and “insurers”. (<http://www.fincen.gov/section312interim.pdf>)

But it is important to note that the exemption of agents and brokers from the PATRIOT Act and its regulations does not mean that insurance agents and brokers have no obligations to report money laundering. Despite the exemption of insurance agents and brokers from the definition of insurer, businesses are still expected to comply with existing anti-money laundering and anti-terrorism requirements in the law (such as under the original BSA, to the extent that it applies to insurance, and criminal racketeering statutes) and regulations. According to the National Association of Insurance Commissioners in a survey conducted in 2002, numerous states have money laundering statutes, currency reporting requirements, and one state also has a suspicious activity reporting requirement. A review of state laws and regulations is beyond the scope of this FAQ, but it is important that agents and brokers understand and comply with all applicable state laws and regulations on these issues.

4. Why should agents and brokers care about the PATRIOT Act?

Agents and brokers who sell permanent life insurance policies (other than group life insurance policies), annuities (other than a group annuity contract), and “any other insurance product with features of cash value or investment” will be affected by the anti-money laundering compliance programs that insurance companies are required to implement by May 2, 2006. Although those agents and brokers are not required to establish their own anti-money laundering program, the regulations contemplate that insurance companies establish and implement policies, procedures, and internal controls that integrate its agents and brokers into the insurance companies’ anti-money laundering programs. The rule that went into effect on May 2, 2006 anticipates that agents and brokers will play an integral role in the operation of an insurance company’s anti-money laundering program. It also stated that agents and brokers will be expected to comply with insurance carrier anti-money laundering programs, and insurance carriers will be expected to terminate business relationships with noncompliant agents and brokers.

5. Do insurance agents and brokers have any responsibilities under other laws regarding money laundering?

Yes. Although insurance agents and brokers do not have to develop their own anti-money laundering compliance programs under the PATRIOT Act and its regulations, they are required to follow state laws and regulations as well as other applicable federal laws and regulations, such as restrictions on criminal racketeering. In general, agents and brokers should:

- Refrain from assisting in money laundering when they know, or reasonably should know, that money laundering is occurring;
- Report known or suspected money laundering to the Department of Treasury, Financial Crimes Enforcement Network (“FinCEN”) (see Q&A #6 for information on FinCEN);
- Refrain from informing (or “tipping-off”) the subject of a money laundering investigation that an investigation is ongoing if the agent or broker knows or has reason to know of the investigation (e.g., if the agent reported the subject of the investigation to FinCEN); and
- Report all cash or currency transactions of \$10,000 or more to FinCEN.

Cash Transaction Report (CTR) and Suspicious Activity Report (SAR) forms must be used to report these transactions, and are available on FinCEN’s Web site at www.fincen.gov/reg_bsaforms.html. Filed CTR and SAR reports with their supporting documentation must be kept for five years and must be stored so that they may be accessed within a reasonable period of time.

What is FinCEN?

FinCEN is the Financial Crimes Enforcement Network that works as the informational and analytic support within the Department of the Treasury for the enforcement of the BSA, which was amended by the PATRIOT Act. Anyone wishing to report suspicious financial activity should go to FinCEN's website of www.fincen.gov or call the FinCEN Financial Institutions Hotline at 1-866-556-3974.

7. If an insurance agent or broker is also acting as a licensed securities broker-dealer, do different responsibilities apply under the PATRIOT Act?

Yes. Treasury Department rules implementing the PATRIOT Act sections on securities broker-dealers require securities broker-dealers to report to FinCEN transactions involving \$5,000 or more (even if the transaction is not in cash) by filing an SAR when the securities broker-dealer knows, suspects or has reason to suspect that:

- the funds come from illegal activity;
- the transaction is designed to disguise the illegal origin of the funds;
- the transaction is designed to evade the requirements of the BSA; or
- the transaction has no business or apparent lawful purpose.

The only exceptions to these reporting requirements occur when the transaction violates the securities laws and is appropriately reported to the SEC or the relevant self-regulatory organization pursuant to applicable reporting requirements; or when the transaction involves lost, missing, stolen or counterfeit securities and is reported in accordance with SEC rules.

In addition, the Department of the Treasury requires securities broker-dealers to maintain a written customer identification program ("CIP") that includes identity verification procedures, recordkeeping procedures, procedures to check identity against any approved government lists of known or suspected terrorists, and notices to customers that information is being requested to verify identity. Securities broker-dealers may contractually delegate some of these customer identification activities to another regulated financial institution provided that such reliance is reasonable under the circumstances, the other financial institution is subject to the anti-money laundering compliance program provisions of the PATRIOT Act, and the other financial institution enters into a contract requiring it to certify annually to the securities broker-dealer that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) specified requirements of the securities broker-dealer's CIP. For more information of the customer identification program, please see <http://www.fincen.gov/326bdfinal.pdf>.

8. Are licensed securities broker-dealers encouraged by the SEC to file any other reports regarding possible money laundering under any other circumstances?

Yes. Securities broker-dealers are encouraged to file suspicious activity reports for transactions involving a known or suspected violation of anti-money laundering laws or the BSA, even when the transaction involves less than \$5,000.

9. Do licensed securities broker-dealers have to comply with any other special requirements regarding possible money laundering?

Yes. In applying the PATRIOT Act's anti-money laundering compliance program requirements, the National Association of Securities Dealers requires securities broker-dealers to:

- establish and implement policies and procedures that can reasonably be expected to detect and cause the reporting of transactions that raise a suspicion of money laundering;
- establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and its regulations;
- provide for independent testing for compliance to be conducted by member personnel or by a qualified independent outside party;
- designate an individual or individuals in their firm responsible for implementing and monitoring the day-to-day operations and internal controls of the compliance program; and
- provide ongoing training on compliance for appropriate personnel.

OFFICE OF FOREIGN ASSETS CONTROL (“OFAC”) REQUIREMENTS

10. What laws does OFAC administer?

OFAC administers and enforces U.S. sanctions policy, based on Presidential declarations of a “national emergency” under nine different federal statutes.

11. Who is subject to OFAC regulations?

All U.S. persons must comply with OFAC. OFAC defines all U.S. persons to include all U.S. citizens and permanent resident aliens regardless of where they are located, all persons and entities within the United States, and all U.S. incorporated entities and their foreign branches. In the cases of certain programs, such as those regarding Cuba and North Korea, all foreign subsidiaries owned or controlled by U.S. companies also must comply.

12. Do insurance agents and brokers need to comply with OFAC regulations?

Yes.

13. Are there specific individuals or entities with which insurance agents and brokers are prohibited from conducting business?

Yes. Insurance agents and brokers cannot transact business, including placing insurance, with individuals or entities on the specially designated nationals and blocked persons ("SDN") list or with countries whom the U.S. has imposed sanctions. OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. Collectively, such individuals and companies are called "Specially Designated Nationals" or "SDNs." Their assets are blocked and U.S. persons are generally prohibited from dealing with them.

In addition, OFAC blocks U.S. persons from dealing with certain countries (or products from certain countries) and citizens of certain countries such as Cuba. Since OFAC cannot list all Cuban citizens, insurance agents and brokers must be aware of the countries with which OFAC prohibits dealings (see Q&A #16).

According to a memoranda updated in April 2004 regarding foreign assets control issued to the insurance industry detailing the insurance industry's responsibilities under OFAC administered laws called *Foreign Assets Control Regulations and the Insurance Industry* (accessible at <http://www.treas.gov/offices/enforcement/ofac/regulations/t11facin.pdf>), insurance agents and brokers are prohibited from engaging in transactions that involve:

- individuals, entities, or vessels appearing on OFAC's SDN list;
- governmental entities and officials of Sudan or Cuba;
- companies located in Cuba;
- companies, wherever located, organized in or controlled from Cuba;
- individuals, regardless of citizenship, currently residing in Cuba; and
- Cuban citizens, wherever located (except those legally residing in the United States, or unblocked by OFAC license).

This list is likely to change over time, so it is important that insurance agents and brokers check it for updates.

In addition, whether or not a blocked person is involved, insurance agents and brokers cannot be involved in transactions that would in any way facilitate:

- unlicensed imports and exports of goods and services to and from, and commercial activity in, Iran, Sudan, and Cuba;
- unlicensed shipments of Iranian, Sudanese, or Cuban origin goods;

- imports of uncertified diamonds; or any imports of diamonds from Liberia; or
- imports of goods, technology, or services produced or provided by foreign persons designated on the SDN list by the Secretary of State who promote proliferation of weapons of mass destruction.

14. What are some examples of prohibited insurance transactions according to OFAC?

Some general examples of insurance transactions which would be prohibited or blocked by OFAC because of the interest of an SDN are:

- a health insurance policy issued to a citizen of Cuba;
- a life insurance policy naming a resident of Cuba as beneficiary; and
- a business policy of any type naming as an insured or additional insured any person or entity on the SDN list.

Some general examples of prohibited transactions that would violate U.S. sanctions laws are:

- a property insurance policy written for an international hotel chain covering its hotels in Iran, Sudan or Cuba; and
- a business policy of any type insuring a shipment of goods originating from Iran, Sudan or Cuba;
- an aviation liability policy known to cover scheduled stops in Havana, Cuba by a foreign air carrier.

15. How can an insurance agent or broker access an SDN list?

An updated list of SDNs can be found on the OFAC website. OFAC provides this information in ASCII files in DOS, delimited, fixed-field and country-specific versions. <http://www.treas.gov/offices/enforcement/ofac/sdn/>. This OFAC site is free of charge and also provides a link to recent updates to the SDN list.

16. What are the countries against which the U.S. has sanctions/embargo programs?

Sanctions/embargo programs restrict imports from or exports to specified countries. Nations against whom the U.S. currently maintains sanctions/embargo programs include Cuba, Iran, Iraq, Burma, North Korea, Syria, Sudan, Liberia, and Zimbabwe, among others. Sanctions/embargos differ by country, and may bar insurance agents and brokers from dealing with individuals or companies from a sanctioned/embargoed country and/or from placing insurance on property (or other assets) located in, being imported by or exported to a sanctioned/embargoed country. Insurance agents and brokers should consult the OFAC's sanctions list when insuring overseas risks or dealing with foreign entities to ensure that a transaction does not violate the sanctions/embargo programs. Since this list is likely to change over time, agents and brokers should check it for updates. Information about sanctions/embargo programs and affected countries can be

found on the OFAC website. <http://www.treas.gov/offices/enforcement/ofac/sanctions>. This website contains links to the various sanction/embargo programs and country summaries.

17. Are there exceptions to the prohibitions on doing business with a person or entity on the SDN list or with OFAC sanctioned/embargoed countries?

Yes. OFAC can issue licenses for certain types of transactions, such as the sale of food or medicine. Insurance companies may insure such licensed transactions, but should obtain a copy of the shipper's OFAC license prior to providing coverage. It is the insurer's responsibility to decide whether coverage should be extended to the licensed transaction. If the agent or broker is in doubt, they should call the OFAC hotline at 1-800-540-6322.

18. What can insurance agents and brokers do to make sure they comply with applicable OFAC regulations?

- Examine each application as well as other documents available from applicants to determine if the applicant, beneficiary or other party in interest may be an SDN. This applies to reinsurance or excess coverage as well. If the applicant's name is on the SDN list, the policy cannot be issued. If an existing policyholder becomes an SDN, the agent or broker should contact OFAC Compliance immediately upon discovery. The policy itself is a blocked contract and all dealings involving the policy must involve OFAC.
- Verify that goods being insured are not located in, being exported from, or imported into a country against which the U.S. has imposed an embargo or sanctions, when the policy covers goods in transit.
- Compare the name of the policy applicant, beneficiary or other party with an interest in the policy, whether an individual, business or government entity, against OFAC's SDN list and sanctions/embargo programs list.
- Obtain identification, address and nationality information for applicants and beneficiaries of personal policies (e.g., life insurance, health insurance). The SDN list does not contain the name of every citizen and resident of Cuba. Since insurance agents and brokers are not permitted to deal with citizens or residents of Cuba, agents and brokers may want to photocopy the driver's license (or other government-issued photo ID displaying the applicant's address) of every applicant. Agents and brokers should keep copies of those identifications so that, if later challenged, they can show a good faith effort to comply with the OFAC requirements. For group policies such as worker's compensation claims, if the agent does not know the names of those covered under a group policy, the agent would have no reason to block coverage. However, if an SDN files a claim under the policy, the blocking provisions would be activated.

19. Are there any resources available to insurance agents and brokers to make compliance with OFAC laws easier?

Yes. First, in an attempt to increase public awareness of these programs, OFAC has issued memoranda regarding foreign assets control to various industries. In October 2003, and updated in April 2004, one such memorandum was issued to the insurance industry, detailing the insurance industry's responsibilities under OFAC administered laws. It can be accessed at <http://www.treas.gov/offices/enforcement/ofac/regulations/t11facin.pdf> This memorandum issued by OFAC may be updated and changed periodically, so agents and brokers should check for updates.

Second, while information on the SDN list and sanctioned/embargoed countries can be obtained free of charge through OFAC's Web site at <http://www.treas.gov/offices/enforcement/ofac/sdn/>, an agent or broker may wish to use one of the many software solutions designed to assist OFAC compliance. Examples of such software providers are listed in Attachment A.

20. Are there other things insurance agents or brokers can consider doing to facilitate OFAC compliance?

Yes. OFAC recommends developing a policy which specifies the frequency with which an agent or broker compares his/her client list to the SDN list. In addition, an agent or broker may want to appoint one of his/her employees to be a compliance officer responsible for monitoring compliance with the OFAC requirements.

21. Where can an insurance agent or broker call to get additional information about OFAC compliance?

General information regarding OFAC can be found at <http://www.treas.gov/offices/enforcement/ofac/>. When in doubt about a specific proposed or existing policy or for additional information, an agent or broker can contact OFAC's Compliance Division at (202) 622-2490. Before doing so, however, go to "When Should I Call the OFAC Hotline" at http://www.treas.gov/offices/enforcement/ofac/faq/one_page.html. This will give guidance on the due diligence needed before calling OFAC.

22. What should an agent or broker do if the name of their client appears on the OFAC SDN or sanction/embargo list?

If there is a match and the agent or broker has not received a payment for a policy, the agent or broker should decline the business. If there is a match and the agent or broker has received payment, the payment must be transmitted to an interest-bearing blocked account established at a U.S. financial institution, and such funds cannot be used to set-off premiums or other sums due. Rights in blocked policies, such as changing a

beneficiary or assigning an insured's interest in a policy, cannot be exercised without authorization from OFAC. Blocked policies and blocked policy payments must be reported within 10 days to OFAC's Compliance Program Division by fax at (202)622-2426. Forms are located on the OFAC website at <http://www.treas.gov/offices/enforcement/ofac/forms/>

It is important to note that there can be matches or near matches with names on the SDN list for innocent reasons. These false positives may occur simply because someone on the SDN list happens to have the same (or nearly the same) name as someone who is not on the list. When any match occurs, the steps outlined in at http://www.treas.gov/offices/enforcement/ofac/faq/one_page.html should be followed. These steps outline the due diligence that an agent or broker should follow before notifying OFAC. These steps include comparing all information on a particular SDN, including address, aliases, ID numbers, and other identifying information to ensure that it is an actual match and not a coincidence.

23. What is the penalty for violating the laws administered by OFAC?

Criminal prosecution under OFAC-administered laws can result in penalties of up to \$1,000,000 and up to 12 years in jail per violation. OFAC also has the authority to impose civil penalties for violations of U.S. sanctions law, which can be up to \$1,075,000, depending on the sanctions/embargo program.

24. Is there a mechanism for a company to report its past undetected violations of OFAC regulations for completed transactions?

Yes, a company can voluntarily disclose a past violation. Self-disclosure is considered a mitigating factor by OFAC in civil penalty proceedings. A self-disclosure should be in the form of a detailed letter, with any supporting documentation, to the Director, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, DC 20220.

25. Is any type of "amnesty" available for inadvertent failure to comply prior to the agent or broker becoming aware of the OFAC regulations?

OFAC does not have an "amnesty" program. OFAC does, however, review the totality of the circumstances surrounding any violation, including the quality of a company's OFAC compliance program.

Attachment A

IIABA does not endorse or recommend any vendor contained on this list. This list is merely provided as a courtesy to demonstrate the different vendors that are available. IIABA has conducted no due diligence on any of the listed vendors. This list of vendors is not meant to be exhaustive. The products and prices offered by each vendor may change and IIABA does not guarantee any of the listed products or prices are or will be available. Agents and brokers should make their own independent evaluation of any vendor it considers using.

Bridger Systems, Inc.

Phone: 800.915.8930

Website: <http://www.bridgersystems.com/>

Products: OFAC Tracker 5.0, Homeland Tracker, World Tracker

Price: Starts at \$900 per year, depending on options and the size of the organization

OFAC Tracker 5.0: Compliance tracking solution using OFAC/SDN; can create necessary OFAC reports in only a few minutes; full viewing, tracking and editing functions

Homeland Tracker: All the features of OFAC Tracker plus compliance with the USA PATRIOT Act (Non-cooperative Countries and Territories, Bureau of Export Administration, Consolidated List - Canada, Politically Exposed Persons, FBI listings)

World Tracker: All the features of the OFAC and Homeland Trackers, plus worldwide financial transactions monitoring (United Nations Consolidated List, World Bank Debarred Parties, EU List)

Darien Consulting Group, Inc.

Phone: 804.272.3334

Website: <http://www.darienconsultinggroup.com/>

Product: OFAC Explorer

Price: \$1500 per year

Windows-based program to track OFAC/SDN list as well as Department of Commerce's list of Denial Orders; allows user to maintain their own list of names; data is updated via e-mail

Logica, Inc.

Phone: 617.476.8000

Website: <http://www.logica.com/>

Product: Hotscan

Price: Starting at \$45,000 (depending on configuration) for 99-year license

Automated transaction scanning software; automates all back office OFAC compliance processing functions; detects misspellings, abbreviations, name juxtapositions

Prime Associates, Inc.

Phone: 732.549.1400

Website: <http://www.primeassociates.com/>

Product: OFAC Filtering Software

Price: Between \$3500-\$50,000 depending on interface and application needs
Filters OFAC customer database information and performs desktop inquiries
in real time

America Software Corporation

Phone: 305.377.3502

Website: <http://www.americasoft.com/>

Product: AFACS (Americas Foreign Asset Control Software)

Price: Contact American Software

Windows-based software provides automated daily updates of OFAC files, including SDN, Specially Designated Terrorists, Specially Designated Narcotics, Department of Commerce Denial Orders; option to create a personalized Suspect File

FircoSoft (France)

Phone: 631.547.5400 (Number for Safe Banking Systems, which distributes FircoSoft products in the US)

Website: www.fircosoft.com, www.safe-banking.com

Product: OFAC-Agent

Price: Contact Safe Banking Systems

Designed to automatically block OFAC listed parties; searchable by imputing any message structure (payment, securities, letter of credit, telex, etc.)
