

Powered by
ExamFX - Online
Training &
Assessment

Select Chapter ▾



Study Chapter Practice Question

Quiz

Establishment of Anti-Money Laundering Programs

A. Section 352 of USA PATRIOT Act

Section 352 of the USA PATRIOT Act requires all insurance companies issuing or underwriting covered products to establish an anti-money laundering (AML) program applicable to its covered products. The AML program should be structured so that it is reasonably expected to prevent the insurance company from being utilized to launder money.

1. Covered Products

The USA PATRIOT Act defines covered products as

- 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 of covered products within the law uses a functional approach. It includes insurance products that have the same types of features and characteristics that make permanent life insurance and annuity products more at risk of being used for money laundering, such as, having a cash value or investment feature. Insurance products that do not build cash values such as term life insurance, property and casualty insurance and health insurance are not considered covered products.

Exceptions

There are some insurance products that build cash values that are not considered covered products under the USA PATRIOT Act because of a combination of products structure and circumstances surrounding their sale and funding. The following insurance products are specifically **excluded** from the definition of covered products by the USA PATRIOT Act:

- Group insurance products (group life or annuities);
- Products offered by charitable organizations, such as charitable annuities;
- Contracts of **indemnity** and structured settlements (including workers compensation payments).

2. Requirements of the Producer

Insurance agents are not required to have their own anti-money laundering programs, but the insurers for whom they sell covered products will require them to participate in anti-money laundering training as part of the insurer's AML program. Insurance agents are in a unique position to make observations due to their contact with the customer and, as such, will often be exposed to information about the source of investment assets, the nature of the clients, and the objectives for which the insurance products

are being purchased. Insurance agents have an important role to play in assisting the insurance company to prevent money laundering which include the following:

- Be familiar with the insurance company's AML program;
- Know the red flags and report suspicious activity to the AML officer of the insurance company;
- Provide additional client information upon request by the AML officer
- Know the acceptable forms of payment;
- Be prepared to refuse the business or suspend the transaction if criminal activity is suspected;
- Maintain complete and accurate records in client file; and
- Do not disclose suspicious activity or the filing of a SAR-IC to anyone, including the customer, outside of AML department, law enforcement or government agencies.

Confidentiality is of the utmost importance as alerting a customer that their actions constitute suspicious activity is a direct violation of AML laws and may result in civil and criminal penalties as well as potentially put the agent in danger.

3. Requirement of Insurance Company AML Program

The AML Program must be in writing, approved by senior management, and available to the Treasury Department for inspection if requested. In addition to the establishment of AML programs, Section 352 of the USA PATRIOT Act requires that as part of the AML program insurance companies:

- Designate an AML Compliance Officer;
- Develop risk-based policies, procedures and controls to identify money laundering;
- Integrate insurance agents into their AML programs;
- Establish an AML training program and provide ongoing training; and
- Undergo periodic independent testing and verification of the effectiveness of the AML program.

The AML compliance officer does not have to be a full-time position unless the transaction volume or level of risk dictates. The AML compliance office should have the necessary authority to oversee the day-to-day activities of the AML program.

Independent testing and review must be accomplished by either an independent third party or insurance company personnel who do not work specifically for the AML compliance officer. The testing and review process should include a review of the risk-based decisions made in system design as well as testing of the day-to-day functions of the AML program. A written report of the findings, including any recommendations, should be sent to senior management.

While all insurance companies selling covered products are required to establish an anti-money laundering program, it is possible for the programs to vary widely from one company to another. The AML program should take into account the covered products sold, types of customers, distribution channels and geographic area served. Agents are not required to establish their own AML programs, but they must be familiar with the AML program of each insurer whose covered products they sell.

4. Risk-Based Approach to AML Program

While section 352 of the USA PATRIOT Act requires that the AML program be developed using a risk-based approach, money launderers and terrorist organizations often have considerable knowledge of life insurance companies and products, and take extreme measures to hide their financial activities that make them difficult to

distinguish from legitimate insurance transactions. A risk-based approach is designed to make it more difficult for these criminals to make use of life insurance companies due to the increased focus on the identified higher risk activities.

5. Factors Influencing Risk-Based Approach

A risk-based approach will allocate resources to areas where money laundering or terrorist financing is most likely to occur. The risk-based approach to establishing an anti-money laundering program can vary greatly depending on the products sold, types of customers serviced, and many other factors. Some of the items that are considered by the insurer when developing a risk-based approach include

- Distribution channel where transaction originates;
- Customer characteristics;
- Method of payment;
- Size and frequency of transaction;
- Type of insurance product involved; and
- Existence of a beneficial owner other than the customer.

6. Forms of Payment Accepted

One of the first decisions many insurers made in order to comply with AML regulation was to revise and formalize their policies and procedures related to the acceptance of payments. Since the first step in money laundering is placement, many insurers feel that one critical way to limit risk is to identify the types of payments that are most likely to represent an attempt to inject illicit funds into an insurance product. Once these forms of payment are identified, the insurer can decide to either not accept these forms of payment or subject them to additional scrutiny. While the forms of payment vary by insurance company, the following chart outlines the predominant methods of acceptable and unacceptable payments. To identify acceptable payment types by company, an agent must consult their company's individual AML policy. Cash and cash equivalents are the most common forms of payments used in the placement stage of money laundering and are subject to the highest level of scrutiny by financial institutions.

Acceptable Payment Methods	Unacceptable Payment Methods
Personal Checks drawn on a domestic bank	Cash
Company Checks drawn on a domestic bank on behalf of company employees	Third party checks
Checks from other financial institutions made payable to the insurance company on behalf of the insured (common in Section 1035 exchanges and custodian-to-custodian transfers)	Checks or cash equivalents drawn on foreign banks
Check from a close relative for the benefit of the insured or a minor in the case of a custodial account	Starter checks when the customer information is not imprinted on the check
Bank checks (Cashier checks)	Travelers checks

Money Orders	Checks drawn on a foreign bank
Wire transfers from acceptable financial institutions	Endorsed money orders, cashier checks or other cash equivalents
Foreign checks only if paid through a domestic bank in US currency	Frequent payments outside of the normal premium policy or payment schedule

A sophisticated criminal may understand the additional focus placed on new accounts by a risk-based anti-money laundering program and their true intentions may only become evident once they begin processing unusual transactions. This makes continual monitoring of account activity an important part of the overall anti-money laundering program. Some of the triggers used by insurance companies to identify transactions requiring a closer look include the following:

- Policies surrendered during the **free look** period. Premium size can be used as a parameter to trigger a closer look.
- Policy **assignment** or use as collateral. Policy size and age of **contract** can be used as parameters.
- Policy surrender during surrender charge period. Policy size and timing of surrender are parameters that can be used to trigger a closer look.
- Change of policy ownership. Contract value, relationship (or lack thereof) of new owner to original owner, and size and age of contract can serve as triggers for additional review.
- Request for payments of living benefits where the payment is to be sent to an unrelated third party, a foreign financial institution, or to an entity in a high-risk country.
- A pattern of policy loans or living benefit distributions that are immediately repaid in cash or cash equivalents.

7. Customer Profiles

Another part of a risk-based anti-money laundering program is identifying customer profiles (individual or business) that are considered higher risk. The U.S. Treasury Department has provided some guidance by identifying certain types of individuals and businesses that should be considered higher risks for money laundering.

Examples of higher-risk individual customers include

- A senior official in the executive, legislative, administrative, or judicial branch of a foreign government;
- A senior official of a major foreign political party;
- A senior executive of a foreign-owned corporation; and
- Any resident, business, or official of a country that is listed on the "Non Cooperative Jurisdictions" list maintained by the Financial Actions Task Force (FATF).

Examples of higher-risk business customers include

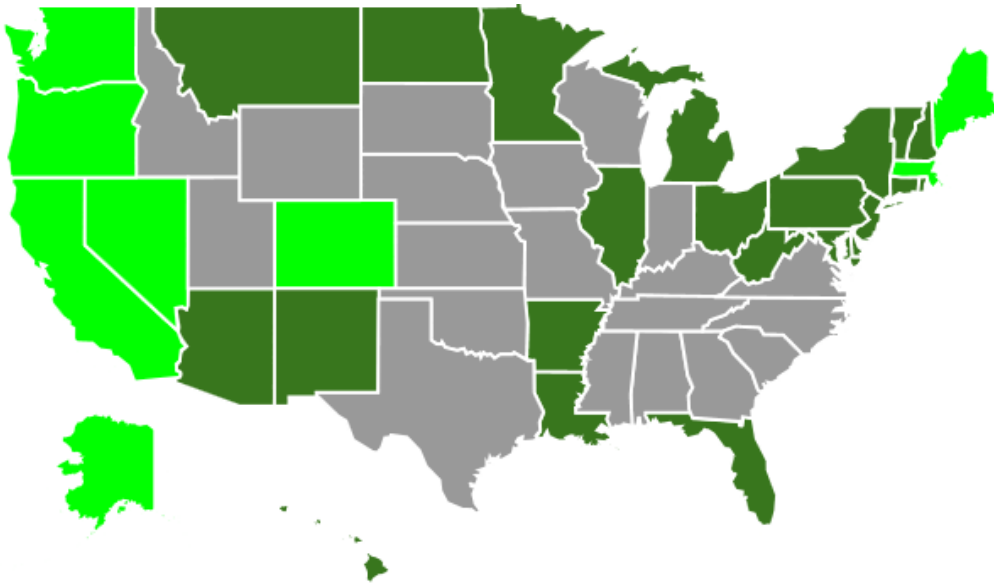
- Import/export companies;
- Pawn brokers and deposit brokers;
- A jeweler or precious metals dealer;
- Professional service providers such as lawyers and accountants, particularly when acting on behalf of a client.;

- Any cash intensive business, such as restaurants, bars, retail stores, convenience stores, strip clubs, and parking garages;
- Check cashing facilities (money service businesses);
- Currency exchange houses; and
- Offshore corporations and banks or businesses located in high-risk foreign countries (Non Cooperative Jurisdictions as identified by the Financial Actions Task Force).

Insurance companies are not prohibited from doing business with high-risk individuals or businesses, but when transacting business there should be enhanced scrutiny and due diligence.

8. Insurance Companies are Weeding Out Marijuana-Related Risks

Many insurance companies with covered products are currently on the sidelines when it comes to doing business with marijuana-related businesses. Currently, 30 states and the District of Columbia have legalized marijuana-related activity, whether it be for medicinal use only or (as in 8 states) for recreational purposes as well.



Marijuana Legalization Status

- Medical marijuana broadly legalized
- Marijuana legalized for recreational use
- No broad laws legalizing marijuana

SOURCE: Governing.com

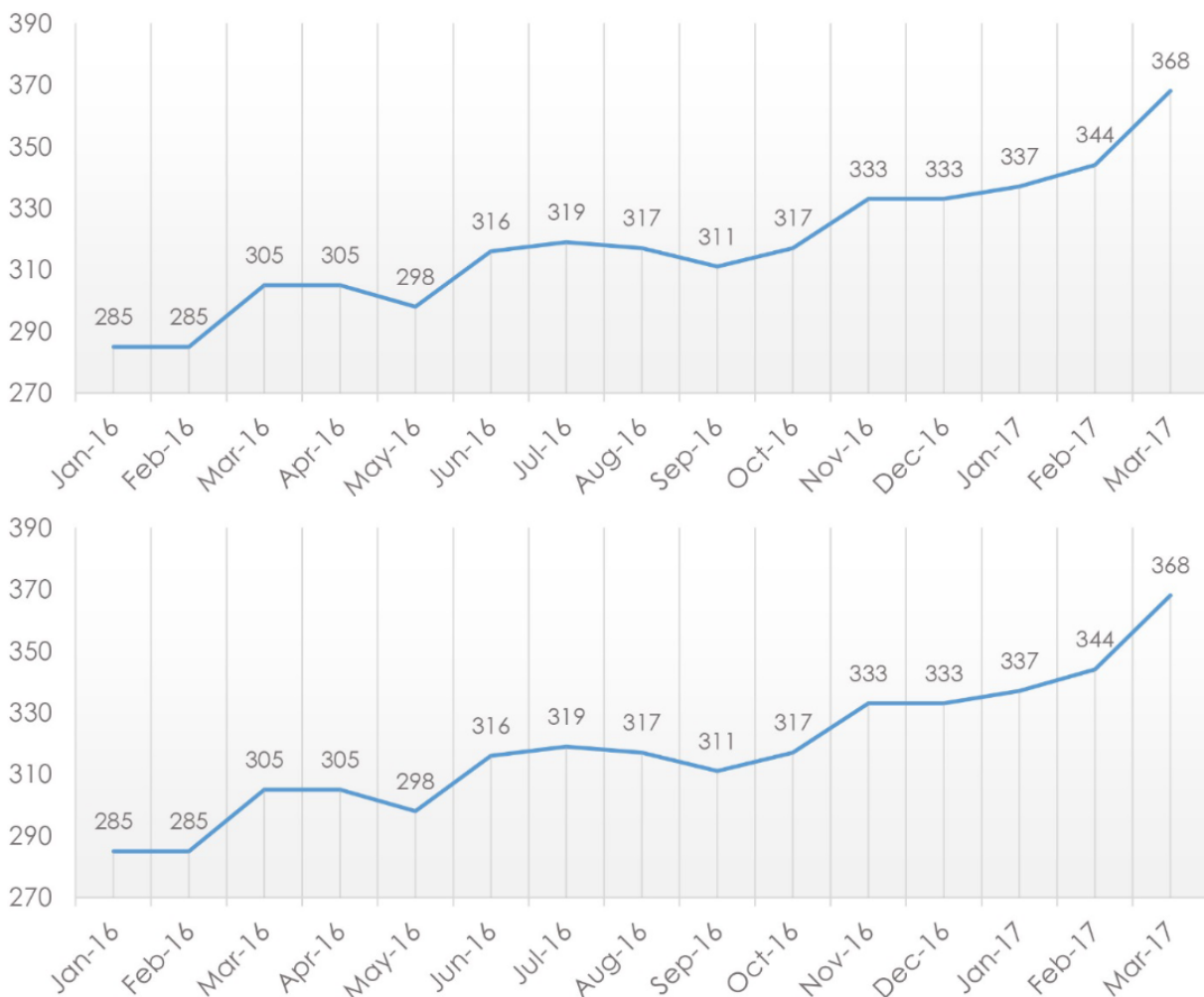
The problem is, regardless of the state laws, federal laws still make it illegal to manufacture, distribute or dispense marijuana under the Controlled Substances Act.. In January 2018, Attorney General Jeff Sessions rescinded a prior memo issued by the Obama Administration which discouraged federal prosecutors from enforcing federal marijuana laws in states where it was legal. Sessions directed all U.S. Attorneys to use “previously established prosecutorial principles that provide them all the necessary tools to disrupt criminal organizations, tackle the growing drug crisis, and thwart violent crime across our country” and reiterated that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs and cartels.

On February 14, 2014, FinCEN issued guidance, “BSA Expectations Regarding Marijuana-Related Businesses,” to financial institutions, including life insurance and

annuity companies, requiring those companies doing business with persons or companies involved in the manufacturing, selling or distribution of marijuana to file a special SAR. The “marijuana limited” SAR indicates that the customer is engaged in a marijuana-related business but no other suspicious activity has been identified. While the individuals or companies may be licensed and properly operating their business according to state laws, many insurance companies have instructed their agents to not accept applications from anyone known to be in a marijuana-related business.

However, as the medical and recreational use of marijuana becomes more widespread, more and more financial institutions are expected to find ways to service the financial needs of that industry. In 2017, FINCEN reported the number of depository institutions actively banking marijuana businesses in the United States (measured by the number of SARs filed).

Number of Depository Institutions Actively Banking Marijuana Businesses in the United States (Reported in SARs)



B. Customer Identification Program

Section 326 of the USA PATRIOT Act requires covered insurance companies to establish and maintain a Customer Identification Program (CIP). Section 326 does not apply to insurers selling only covered products that are not also FINRA supervised products. *For example*, an insurer selling covered products in the form of fixed annuities or traditional cash value life insurance products that do not require selling

agents to also be securities-licensed, are not specifically required under Section 326 to establish a customer identity program.

However, there are parts of the Bank Secrecy Act that require insurance companies to obtain and retain identifying information from customers in certain situations. The bottom line is insurance companies must obtain and retain relevant and appropriate customer information necessary to administer an effective anti-money laundering program.

1. CIP Program Requirements

The CIP must include elements covering customer identity, customer identity verification, customer screening and records retention. These requirements of the CIP are often referenced using the term “**Know Your Customer**” (KYC).

The first step in a CIP is to determine and verify the identity of the customer. Since the customer can be an individual or a business, there are separate sets of procedures and processes for each of these types of customers.

The process of identity verification (IDV) requires the following:

When the **customer is an individual**:

- Customer full legal name;
- Date of birth;
- Customer’s physical address. This should be the personal residence of the customer not a P.O. Box, commercial mailbox, or company address.
- Social Security Number or Tax ID #. Most insurance companies require customers to complete and sign the IRS form W9: Request for Taxpayer Identification and certification.

When the **customer is a business**, many of the same documents are required as when the customer is an individual. The insurance company must verify the identity of the individual purporting to represent the business entity, and the existence of the business entity. There are 2 steps to the business identification process. The first step is to verify that the business does exist and the second step is to verify that the customer is legally empowered to represent the business. The following documents are used in this process:

- If the business is a Corporation, present Certified Articles of Incorporation;
- If the business is a Limited Liability Company or Limited Liability Partnership, present an Operating Agreement;
- If the business is a General Partnership, present a Partnership Agreement;
- If the customer is a trust, present a Trust Document;

In addition to these general business documents, some insurance companies will also require documentation of organizational meeting, certified financial statements, or a business license.

Identity Verification and Record Retention

Verification of this information should include a photo ID, such as a state issued driver’s license, state issued photo ID, U.S. Passport, U.S. Military ID, Resident Alien ID (green card), or some foreign government ID cards.

The agent is not specifically required under the various AML laws to retain a copy of the photo ID, but some insurance companies do require the agent to retain a copy. Therefore, the agent should become familiar with all requirements of their insurers’ anti-money laundering programs, including any recordkeeping requirements.

When the agent is doing business with a customer via phone, mail, or Internet, the agent will likely not meet with the customer face to face. It is also possible that the agent will meet with a customer, but the customer is purchasing an insurance product for an individual that the agent does not meet. In these cases the customer's identity can be verified by the insurance company using other methods.

An insurance company can use several methods to verify customer identity other than the agent actually seeing a photo ID. These methods are called non-documentary identity verification. Usually non-documentary identity verification includes one or more of the following methods:

- Insurance company personnel contact the customer after the account is opened and verify that address, phone number and social security number or taxpayer identification number are correct.
- Insurance company personnel compares the information provided by the customer with data available from a third party such as a credit bureau, or government entity.
- Checking references provided by customer with other financial institutions
- Physical verification of the customer's address (for an individual or a business).
- Using various other online identity verification procedures.

The insurance company is not required to determine the veracity of the customer identity information or documents provided. Specifically the insurance company may rely on government issued (U.S. or state government) ID's to establish identity.

It should be noted that from a reputational risk perspective some insurers will require additional identity documentation or verification. Using a risk-based approach, some insurance companies will use both non documentary methods of identity verification and verification of identity through a photo ID for certain customers and/or transaction types.

Special Designated Nationals

An office of the U.S. Treasury, The Office of Foreign Asset Control (OFAC), maintains and publishes a list of Special Designated Nationals (SDN). This list represents individuals and companies owned or controlled by, or acting for or on behalf of, countries targeted by the U.S. Treasury Department. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers that are considered threats to national security. Their assets of SDNs are blocked and U.S. persons and businesses are generally prohibited from dealing with them. Financial entities (including insurance companies) must check this SDN list against all existing and new customers.

C. Bank Sales of Insurance

Insurance products are typically sold to bank customers through networking arrangements with an affiliate, an operating subsidiary, or other third-party insurance providers. Banks are also interested in providing cross-selling opportunities for customers by expanding the insurance products they offer. Typically, banks take a role as a third-party agent selling covered insurance products. The types of insurance products sold may include life, health, property and casualty, and fixed or variable annuities.

When an insurance agent or **broker** already is required to establish a BSA/AML compliance program under a separate requirement under BSA regulations (e.g. bank or securities broker requirements), the insurance company may rely on that compliance program to address issues at the time of sale of the covered product. However, the bank may need to establish specific policies, procedures, and processes

for its insurance sales in order to submit information to the insurance company for the insurance company's AML compliance.

Likewise, if a bank, as an agent of the insurance company, detects unusual or suspicious activity relating to insurance sales, it can file a joint SAR-IC on the common activity with the insurance company.

Chapter Complete

© 2020 ExamFX All rights reserved.

[Contact Us](#) | [Privacy Statement](#) | [Terms Of Use](#) |
[Terms and Conditions](#)