

DEPARTMENT OF THE TREASURY

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Office of the Comptroller of the Currency

12 CFR Part 14

[Docket No. 00-16]

RIN 1557-AB81

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. R-1079]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 343

RIN 3064-AC37

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 536

[Docket No. 2000-68]

RIN 1550-AB34

Consumer Protections for Depository Institution Sales of Insurance

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, (collectively, the Agencies) are requesting comment on proposed insurance consumer protection rules. These rules are published pursuant to section 47 of the Federal Deposit Insurance Act (FDIA), which was added by section 305 of the Gramm-Leach-Bliley Act (the G-L-B Act or Act). Section 47 directs the Agencies jointly to prescribe and publish consumer protection regulations that apply to retail sales practices, solicitations, advertising, or offers of any insurance product by a depository institution¹ or any person that is engaged in such activities at an office of the institution or on behalf of the institution.

DATES: Comments must be received by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments should be directed to:

Office of the Comptroller of the Currency (OCC): Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Third Floor, Washington, DC 20219, Attention: Docket No. 00-16; FAX number (202) 874-5274 or Internet address: regs.comments@occ.treas.gov. Comments may be inspected and photocopied at the OCC's Public Reference Room, 250 E Street,

¹ "Depository institution" means national banks in the case of institutions supervised by the OCC, state member banks in the case of the Board, state nonmember banks in the case of the FDIC, and savings associations in the case of the OTS.

SW., Washington, DC, between 9:00 a.m. and 5:00 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874-5043.

Board of Governors of the Federal Reserve System (Board): Comments, which should refer to Docket No. R-1079, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, D.C. 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP-500 between 9:00 a.m. and 5:00 p.m., pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding the Availability of Information, 12 CFR 261.12 and 261.14.

Federal Deposit Insurance Corporation (FDIC): Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 17th Street building (located on F Street) on business days between 7 a.m. and 5 p.m. (Fax number (202) 898-3838). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

Office of Thrift Supervision (OTS): Send comments to Manager, Dissemination Branch, Information Management & Services Division, Office of Thrift Supervision, 1700 G Street, NW.,

Washington, DC 20552, Attention Docket No. 2000-68. Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 A.M. to 4:00 P.M. on business days. Send facsimile transmissions to FAX Number (202) 906-7755 or (202) 906-6956 (if the comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW., from 10:00 A.M. until 4:00 P.M. on Tuesdays and Thursdays. Comments will also be posted on the OTS Internet Site at ots.treas.gov.

FOR FURTHER INFORMATION CONTACT:

OCC: Stuart Feldstein, Assistant Director, or Michele Meyer, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874-5090; Asa Chamberlayne, Senior Attorney, Securities and Corporate Practices Division, (202) 874-5210; Stephanie Boccio, Asset Management, (202) 874-4447; Barbara Washington, Core Policy Development (202) 874-6037, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Richard M. Ashton, Associate General Counsel, Legal Division, (202) 452-3750; Angela Desmond, Special Counsel, Division of Banking Supervision and Regulation, (202) 452-3497; David A. Stein, Attorney, Division of Consumer and Community Affairs, (202) 452-3667, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, D.C. 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), contact Janice Simms, (202) 872-4984.

FDIC: Keith A. Ligon, Chief, Policy Unit, Division of Supervision, (202) 898-3618; Michael B. Phillips, Counsel, Supervision and Legislation Branch, Legal Division, (202) 898-3581; Jason C.

Cave, Senior Capital Markets Specialist, (202) 898-3548, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

OTS: Robyn Dennis, Manager, Supervision Policy, (202) 906-5751; Richard Bennett, Counsel (Banking and Finance), (202) 906-7409; Mary Jane Cleary, Insurance Risk Management Specialist, (202) 906-7048, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION:

Background

On November 12, 1999, President Clinton signed the G-L-B Act into law. Section 305 of the Act² added new section 47 to the FDIA, captioned “Insurance Customer Protections.” This section requires the Agencies jointly to prescribe and publish in final form, by November 12, 2000, consumer protection regulations that apply to retail sales practices, solicitations, advertising, or offers of insurance products by depository institutions or persons engaged in these activities at an office of the institution or on behalf of the institution. Section 47 directs the Agencies to include specific provisions relating to sales practices, disclosures and advertising, the physical separation of banking and nonbanking activities, and domestic violence discrimination.

Section 47 also requires the Agencies to consult with the State insurance regulators, as appropriate. The Agencies circulated a working draft of this proposal to the National Association of Insurance Commissioners (NAIC) and, on June 29, 2000, met with NAIC representatives to discuss

² Pub. L. 106-102, sec. 305, 113 Stat. 1338, 1410-15 (to be codified at 12 U.S.C. 1831x).

the proposal. These proposed rules reflect certain comments received from the NAIC in that meeting.

The texts of the Agencies' proposed rules are substantially identical. Any differences in style or terms are not intended to create substantive differences in the requirements imposed by the regulations. The Agencies request comment on all aspects of the proposed rules and on the specific provisions and issues highlighted in the section-by-section analysis.

Section-by-section analysis

The discussion that follows applies to each of the Agencies' proposed rules. Given that each agency will assign a different part to its insurance consumer protection rule, the citations are to sections only, leaving citations to part numbers blank.³

§ __.10 Purpose and scope.

These proposed rules establish consumer protections in connection with retail sales of insurance products and annuities⁴ to consumers by any depository institution or by any person that is engaged in such activities at an office of the institution or on behalf of the institution.⁵ A number of issues that clarify the scope of the rule are addressed through specific definitions discussed below.

For example, section 47 gives the Agencies discretion to determine whether the Act's

³ The Board's proposed rule would be a new subpart of the Board's existing Regulation H, and not a separate regulation. Accordingly, the sections of the Board's proposed rule are numbered consecutively.

⁴ These proposed rules are not intended to have any effect on whether annuities are considered to be insurance products for purposes of any other section of the G-L-B Act or other laws. That question depends on the terms and purposes of those laws, as interpreted by the courts and the appropriate agency.

⁵ The Agencies note that other State consumer protection rules also may apply to bank and thrift insurance sales.

consumer protections should extend to a depository institution's subsidiary in other circumstances. The Agencies have determined to apply the proposed rules to subsidiaries only if they are selling insurance products or annuities at an office of the institution or acting "on behalf of" the depository institution as defined in the rules.⁶ A more complete discussion of when a person is engaged in insurance activities "on behalf" of the depository institution is set forth below in the definition of "covered person." In addition, the Agencies intend to cover insurance and annuities sales activities on the institution's Internet web site and other forms of electronic media.

§ __.20 Definitions.

a. Affiliate. The proposed rules use the definition of "affiliate" that is used in section 3 of the Federal Deposit Insurance Act (FDIA),⁷ which, in turn, refers to section 2(k) of the Bank Holding Company Act of 1956 (BHCA).⁸ Companies are affiliates if one company controls, is controlled by, or is under common control with another company.

b. Company. The proposed rules use the definition of "company" that is used in section 3 of the FDIA,⁹ which, in turn, refers to section 2(b) of the BHCA.¹⁰ A "company" includes corporations,

⁶ OTS does not intend the requirements of this part to apply to other savings association operating subsidiaries or service corporations by effect of 12 CFR 559.3(h). OCC does not intend the requirements of this part to apply to other national bank operating subsidiaries by effect of 12 CFR 5.34(e)(3).

⁷ 12 U.S.C. 1813(w)(6).

⁸ 12 U.S.C. 1841(k).

⁹ 12 U.S.C. 1813(w)(7).

¹⁰ 12 U.S.C. 1841(b).

partnerships, business trusts, associations and similar organizations.

c. Consumer. The proposed rules define “consumer” as an individual who obtains, applies for, or is solicited to obtain insurance products or annuities from a covered person. Section 47 uses the terms “consumer” and “customer” interchangeably and without appearing to draw distinction between the two terms. These proposed rules use the term “consumer.” The Agencies request comment on whether the definition of “consumer” should be expanded to encompass all retail customers, including small businesses. The Agencies also seek comment on whether to limit the definition of consumer to individuals who obtain or apply for insurance products or annuities primarily for personal, family, or household purposes.

d. Control. The proposed rules use the definition of “control” used in section 3(w)(5) of the FDIA,¹¹ which, in turn, refers to section 2 of the BHCA.¹² Under this definition, which is used to determine when companies are affiliates, a company has control over another company if:

- (1) the company directly or indirectly controls 25 percent or more of any class of the company’s voting securities;
- (2) the company controls in any manner the election of a majority of the directors or trustees of the company; or
- (3) the Board determines that the company exercises, directly or indirectly, a controlling influence over the management or policies of the company.¹³ For purposes of the definition of

¹¹ 12 U.S.C. 1813(w)(5).

¹² 12 U.S.C. 1841.

¹³ 12 U.S.C. 1841(a)(2).

“control” in these rules, the reference in section 2 of the BHCA to the “Board” means the “appropriate Federal banking agency,” as defined in section 3(q) of the FDIA.¹⁴

e. Covered person or you. The term “covered person,” or “you,” is critical in determining to whom the requirements in these proposed rules will apply. As defined in the proposed rules, a covered person means any depository institution or any other person selling, soliciting, advertising, or offering insurance products or annuities to a consumer at an office of the institution *or on behalf of* the institution. A “covered person” may include any person, including an affiliate, if the person or one of its employees engages in such activities at an office of an institution or on behalf of an institution.

For purposes of this definition, a person’s activities are “on behalf of” a depository institution if:

- (1) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the institution;
- (2) The depository institution receives commissions or fees, in whole or in part, derived from the sale of an insurance product or annuity as a result of cross-marketing or referrals by the institution or an affiliate;
- (3) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the institution or use its corporate logo or corporate name; or
- (4) The sale, solicitation, advertising, or offer of an insurance product or annuity takes place at an off-premises site, such as a kiosk, that identifies or refers to the institution or uses its corporate logo or corporate name.

¹⁴ 12 U.S.C. 1813(q).

The Agencies note that the second prong of the “on behalf of” test -- the receipt of commissions or fees -- does not include situations in which the institution receives a fee solely for performing a separate service or function that may relate to an insurance sale (such as processing a credit card charge for the insurance premium, or performing recordkeeping or payment functions on behalf of the affiliate) where the fee is based on that service or function and is not a share of the commissions or fees derived from the insurance product or annuity sale.

The Agencies seek comment on the proposed definition of covered person and specifically on those activities that would cause a person to be considered to be acting “on behalf of” an institution. The Agencies also invite comment on whether the following should be considered an activity on behalf of the institution:

- The use of the name or corporate logo of the *holding company or other affiliate*, as opposed to the name or corporate logo of the depository institution in documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity.
- The sale, solicitation, advertising, or offer of an insurance product or annuity at an off-premises site that identifies or refers to the *holding company or other affiliate*, as opposed to the depository institution, or uses the name or corporate logo of the *holding company or other affiliate*.

The agencies recognize that when electronic media are used, special issues arise. For example, a depository institution’s web site may link or refer a consumer to a separate insurance agency, which may be operated by the institution or an affiliate of the institution or may be unaffiliated. In this kind of transaction, although the depository institution is identified to the consumer through its web site, the mandatory disclosures and other protections of the proposed rules may not be necessary. There may

be instances where a depository institution is not engaged in the sale or solicitation of an insurance product or annuity, but instead acting as a finder by providing consumers web links to providers of insurance products and annuities. Comment is solicited on whether, and under what circumstances, additional disclosures should be required for sales or solicitations by electronic media in order to alleviate any potential confusion as to the identity of source of the insurance, such as a disclosure informing consumers when they are leaving the institution's web site. Also, comment is solicited on whether additional or alternative disclosures might be needed in instances where the depository institution acts as finder by electronic media.

f. Domestic violence. The statute also contains a provision prohibiting the consideration of a person's status as a victim of domestic violence or provider of services to victims of domestic violence in connection with certain insurance activities. Accordingly, the proposed rules prohibit a covered person, with regard to any insurance underwriting, pricing, renewal, or scope of coverage decision, or payment of insurance claim, on a life or health insurance product from considering as a criterion the status of the person applying for the insurance, or the person who is insured, as a victim of domestic violence or a provider of services to domestic violence victims, except as required or expressly permitted under state law. See proposed § __.30(c). The proposed rules adopt the definition of "domestic violence" set forth in section 47 of the FDIA.

g. Electronic media. Section 47 permits the Agencies to make adjustments to the Act's requirements for sales conducted in person, by telephone, or by electronic media to provide for the most appropriate and complete form of disclosure and consumer acknowledgment of the receipt of such disclosures. The proposed rules set forth special rules for electronic disclosures and consumer

acknowledgments and for telephone sales. See proposed §__40. The Agencies recognize that methods of electronic communication are rapidly changing and have attempted to provide flexibility in these proposed rules to accommodate such changes. Thus, the proposed rules define “electronic media” broadly to include any means for transmitting messages electronically between a covered person and a consumer in a format that allows visual text to be displayed on equipment, such as a personal computer. The reference to personal computers is illustrative only and the reference to equipment includes other electronic devices that meet the definition.

The Agencies invite comment on the proposed definition of “electronic media” and whether a more expansive definition would be consistent with the G-L-B Act’s requirement that disclosures be both written and oral.

h. Office. The proposed rules define “office” as the premises of an institution where retail deposits are accepted from the public.

i. Subsidiary. The proposed rules use the definition of subsidiary in section 3(w)(4) of the FDIA.¹⁵ Thus, “subsidiary” means any company that is owned or controlled directly or indirectly by another company and includes any service corporation owned in whole or in part by an insured depository institution or any subsidiary of such a service corporation.

The proposed rules do not define the term “insurance product.” The Agencies recognize that there is no single standard for defining the term “insurance” and that its definition may vary significantly depending on the context in which it is used. For example, section 302 of GLBA lists certain types of

¹⁵ 12 U.S.C. 1813(w)(4).

products that may constitute insurance for purposes of determining when a national bank may underwrite, rather than sell, insurance. Thus, the Agencies will look to a variety of sources in determining whether a given product is covered by the proposed rules. In addition to section 302(c), the Agencies will look to common usage, conventional definitions, judicial interpretations, and other Federal laws. The Agencies invite comment on these and other sources for determining whether a product comes within the scope of the proposed rules, or, alternatively, whether the rule should include a specific definition of the term “insurance.”

§__.30 Prohibited Practices.

The G-L-B Act directs the Agencies to include in the implementing regulations specific prohibited practices. Under section 47(b) of the FDIA, a covered person may not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of the anti-tying provisions of section 106(b) of the Bank Holding Company Act Amendments of 1970,¹⁶ is conditional upon either:

- (1) The purchase of an insurance product or annuity from the depository institution or any of its affiliates; or
- (2) An agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

These prohibitions on tying and coercion are set forth in proposed §__.30(a).

¹⁶ 12 U.S.C. 1972. Section 106(b) of the Bank Holding Company Act Amendments of 1970 does not apply to savings associations. Those institutions are, however, subject to comparable prohibitions on tying and coercion, under section 5(q) of the Home Owners’ Loan Act (HOLA), 12 U.S.C. 1464(q). Accordingly, OTS’s proposed rule cites the HOLA provision.

Section 47(c)(2) of the FDIA also prohibits a covered person from engaging in any practice at any office of, or on behalf of, a depository institution or a subsidiary of a depository institution that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The uninsured nature of any insurance product or annuity offered for sale by the covered person or subsidiary;

(2) In the case of an insurance product or annuity that involves investment risk, the investment risk associated with any such product; or

(3) The fact that the approval of an extension of credit to a consumer by the institution or subsidiary may not be conditioned on the purchase of an insurance product or annuity from the institution or subsidiary, and that the consumer is free to purchase the insurance product or annuity from another source. These prohibitions on misrepresentations are set forth in proposed § __.30(b).

Finally, proposed § __.30(c) implements section 47(e) of the FDIA, which, as already noted, prohibits a covered person from considering a person's status as a victim of domestic violence or a provider of services to domestic violence victims in making decisions regarding certain types of insurance products.

§ __.40 What a covered person must disclose.

In addition to prohibiting the misrepresentations outlined above, section 47(c) of the FDIA requires a covered person to make affirmative disclosures in connection with the initial purchase of an insurance product or annuity. The proposed rules require the following disclosures:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by,

the depository institution or (if applicable) an affiliate;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the depository institution, or (if applicable) an affiliate;

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value; and

(4) The depository institution may not condition an extension of credit on either the consumer's purchase of an insurance product or annuity from the depository institution or any of its affiliates or the consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

Timing and Method of Disclosures

Under proposed § __.40(b)(1), a covered person must provide the disclosures described in § __.40(a) orally and in writing before the completion of the sale of an insurance product or annuity to a consumer. The disclosures concerning the prohibition on tying an extension of credit to an insurance product or annuity purchase (§ __.40(a)(4)) must also be made orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity will be solicited, offered, or sold.

Electronic and Telephone Disclosures

Section 47 of the FDIA authorizes the Agencies to make necessary adjustments to the G-L-B Act's requirements for sales conducted by telephone or by electronic media. Proposed §§ __.40(b)(2) sets forth special timing and method of disclosure rules for electronic and telephone disclosures. Under

§ __.40(b)(2)(i), where the consumer affirmatively consents, a covered person may provide the written disclosures required by § __.40(a) through electronic media instead of on paper, if they are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically, such as by downloading. Under § __.40(b)(2)(ii), if the sale of an insurance product or annuity is conducted entirely through the use of electronic media and written disclosures are provided electronically, a covered person is not required to provide disclosures orally. A covered person must also comply with all other requirements imposed by law or regulation for providing disclosures electronically.

If a covered person takes an application for credit by telephone, § __.40(b)(1) provides that the covered person may provide the written disclosure required by paragraph (a)(4) by mail, provided the covered person mails it to the consumer within three days, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a). Nevertheless, disclosures under § __.40(a)(1)-(4) must be made in writing before completion of the initial sale. The Agencies invite comment on the proposed rules for electronic and telephone disclosures. Specifically, the Agencies request comment on whether the rules are flexible enough to permit future technological innovation and whether the format and timing requirements are sufficient to provide consumers with the type of protections envisioned by section 47 of the FDIA.

The Agencies note that new legislation addressing the use of electronic signatures and electronic records may affect institutions that provide disclosures and obtain acknowledgments electronically. The

Electronic Signatures in Global and National Commerce Act (the E-Sign Act)¹⁷ contains, among other things, Federal rules governing the use of electronic records for providing required information to consumers. A legal requirement that consumer disclosures be in writing may be satisfied by an electronic disclosure if the consumer affirmatively consents and if certain other requirements of the E-Sign Act are met. For example, the E-Sign Act requires that, before a consumer consents to receive electronically information that is otherwise legally required to be provided in writing, the consumer must receive a “clear and conspicuous statement” containing certain information prescribed by the statute.¹⁸ The statute authorizes Federal regulatory agencies to exempt specified categories or types of records from the E-Sign Act requirements relating to consumer consent only if an exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.¹⁹ The Agencies invite comment on whether -- and, if so, how -- they should address the requirements of the E-Sign Act in the context of these proposed rules.

Disclosures must be readily understandable, designed to call attention to the information, and meaningful.

Section 47 of the FDIA requires the Agencies to promulgate regulations encouraging the use of disclosures that are conspicuous, simple, direct, and readily understandable. Proposed §__.40(b)(4) contains this requirement and further requires that the disclosures must also be designed to call attention

¹⁷ Pub. L. 106-229, 114 Stat. 464 (June 30, 2000). The E-Sign Act generally takes effect on October 1, 2000, although there are delayed effective dates for provisions other than those discussed in the text.

¹⁸ See Pub. L. 106-229, sec. 101(c)(1).

¹⁹ *Id.* at § 104(d)(1).

to the nature and significance of the information provided. For example, a covered person may use the following short-form disclosures as may be appropriate:

- NOT A DEPOSIT
- NOT FDIC-INSURED
- NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY
- NOT GUARANTEED BY THE BANK [OR SAVINGS ASSOCIATION]
- MAY GO DOWN IN VALUE.

The Agencies invite comment on whether the final rule should provide specific methods of calling attention to the material contained in the disclosures. For example, the final rule could provide that the disclosures are designed to call attention to the nature and significance of the information provided if they use:

- a plain-language heading to call attention to the disclosures;
- a typeface and font or type size that are easy to read;
- wide margins and ample line spacing;
- boldface or italics for key words; and
- distinctive type or font size, style, and graphic devices, such as shading or sidebars,

when the disclosures are combined with other information.

Further, as provided in proposed § __.40(b)(4), a disclosure generally is not “meaningfully” provided if a covered person merely tells the consumer that the disclosures are available in printed material without also providing the material and orally disclosing the information to the consumer.

Similarly, a disclosure made through electronic media is not meaningfully provided if the consumer may

bypass the visual text of the disclosure before purchasing an insurance product or annuity.

The Agencies invite comment on whether these standards will adequately address situations where disclosures are made through electronic media. For example, the Federal Trade Commission (FTC) recently released guidance on online advertising and sales reiterating that many of the general principles of advertising law apply to Internet advertisements, but recognizing that developing technology raises new issues.²⁰ The FTC guidance describes information businesses should consider when developing their online advertisements to ensure compliance with consumer protection laws with a particular focus on providing clear and conspicuous disclosures in Internet advertisements and sales. The FTC guidance establishes several key factors to consider when evaluating the clarity and conspicuousness of Internet disclosures including:

- (1) the placement of the disclosures in the advertisement and the disclosures' proximity to the relevant claim;
- (2) the prominence of the disclosure and whether other features in the advertisement distract attention from the disclosure;
- (3) how often the disclosures should be repeated relative to the length of the advertisement; and
- (4) whether audio disclosures are presented in an adequate volume and cadence that consumers can hear and understand. The guidance also suggests evaluating whether visual disclosures appear for a sufficient duration appropriate for consumers to notice, read and understand. The Agencies seek comment on whether the type of detail provided in the FTC guidance is necessary in

²⁰ The FTC's guidance, *Dot Com Disclosures: Information about Online Advertising* is available at www.ftc.gov/bcp/conline/pubs/buspubs/dotcom/index.html.

these proposed rules.

Consumer Acknowledgment

Under proposed § __.40(b)(5), a covered person must obtain from the consumer, at the time the consumer receives the disclosures set forth in proposed § __.40(a), a written acknowledgment by the consumer that the consumer received the disclosures. In keeping with the allowance under section 47 for adjustments to the G-L-B Act's requirements for sales conducted by electronic media and the E-Sign Act, proposed § __.40(b)(5) further provides that a consumer who has received disclosures through electronic media may acknowledge receipt of the disclosures electronically or in paper form.

Advertisements and other promotional material.

In accordance with section 47(c)(1)(C) of the FDIA, proposed § __.40(c) clarifies that the disclosures required by proposed § __.40 are not required in advertisements of a general nature describing or listing the services or products offered by the depository institution.

§ __.50 Where insurance activities may take place.

Section 47(d)(1) of the FDIA requires that the Agencies' regulations include provisions to ensure that the routine acceptance of deposits is kept, to the extent practicable, physically segregated from insurance product activity. Proposed § __.50(a) sets forth this general rule. It further requires that, to the extent practicable, a depository institution identify areas where insurance product or annuity sales activities occur and clearly delineate and distinguish them from the areas where the institution's retail deposit-taking activities occur, in accordance with section 47(d)(2)(A) of the FDIA.

Proposed § __.50(b) implements section 47(d)(2)(B) of the FDIA, concerning referrals to

insurance and annuity sales personnel by a person who accepts deposits from the public. Any person who accepts deposits from the public in an area where such transactions are routinely conducted in a depository institution may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product. The person making the referral may only receive a one-time, nominal fee of a fixed dollar amount for each referral. The fee may not depend on whether the referral results in a transaction.

§__.60 Qualification and licensing requirements for insurance sales personnel.

Section 47(d)(2)(C) of the FDIA requires that the Agencies' regulations prohibit any depository institution from permitting any person to sell or offer for sale any insurance product in any part of any office of the institution, or on behalf of the institution, unless such person is appropriately qualified and licensed. Thus, under proposed §__.60, a depository institution may not permit any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

Appendix - Consumer Grievance Process.

Section 47(f) of the FDIA requires that the Agencies jointly establish a consumer complaint mechanism for addressing consumer complaints alleging violations of these proposed rules. Each agency has procedures in place to handle consumer complaints. The Agencies will apply those procedures to complaints involving these proposed rules. The Appendix to each agency's proposed

rule contains the name and address of each agency's consumer complaint office. Any consumer who believes that a depository institution or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the institution or on behalf of the institution has violated the requirements of these proposed rules should contact the consumer complaint office listed in the Appendix. Each agency already has entered into, or is developing, agreements with State insurance commissioners regarding the sharing of consumer complaints. Consumer complaints alleging violations of these proposed rules that raise issues under State and local law will be shared with State regulators pursuant to those agreements.

Effect on Other Authority

Section 47(g) sets forth a general framework for determining the effect of these proposed rules on State law. Under that framework, the Agencies' insurance consumer protection rules will not apply in a State where the State has in effect statutes, regulations, orders, or interpretations that are inconsistent with or contrary to the provisions of the Agencies' rules. If the Board, FDIC and OCC jointly determine, however, that the protection afforded by a provision of these proposed rules is greater than the protection provided by comparable state law or rulings, these proposed rules shall preempt the contrary or inconsistent State law or ruling. Prior to making this determination, the Board, FDIC and OCC must notify the appropriate State regulatory authority in writing, and the Board, FDIC and OCC will consider comments submitted by the appropriate State regulatory authorities. If the Board, FDIC and OCC determine that a provision of these proposed rules affords greater protection than State provisions, the Board, FDIC and OCC will send a written preemption notice to the

appropriate State insurance authority that the provision of these proposed rules will be applicable unless the State adopts legislation within three years to override the preemption notice.

The Board, FDIC and OCC invite comment on whether it would be helpful to include a second appendix restating these statutory requirements or whether such a restatement would be confusing absent a determination regarding the applicability of specific State laws.

Regulatory Analysis

A. Paperwork Reduction Act

The Agencies invite comment on:

(1) Whether the collections of information contained in this notice of proposed rulemaking are necessary for the proper performance of each Agency's functions, including whether the information has practical utility;

(2) The accuracy of each Agency's estimate of the burden of the proposed information collections;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collections on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Respondents are not required to respond to these collections of information unless they display a currently valid Office of Management and Budget (OMB) control number. The Agencies are

currently requesting their respective control numbers for these information collections from OMB.

This proposed regulation contains requirements to make disclosure at two different times. The respondents must prepare and provide certain disclosures to consumers: 1) before the completion of the initial sale of an insurance product or annuity to a consumer; and 2) at the time of application for the extension of credit (if insurance products or annuities are solicited, offered or sold in connection with an extension of credit) (proposed § __.40(b)(1)). The Agencies request public comment on all aspects of the collections of information contained in these proposed rules.

OCC: The collection of information requirements contained in this notice of proposed rulemaking will be submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to Jessie Dunaway, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219, with a copy to the Office of Management and Budget, Paperwork Reduction Project (1557-to be assigned), Washington, DC 20503.

The likely respondents are national banks, District of Columbia banks, and Federal branches and agencies of foreign banks and any other persons selling, soliciting, advertising, or offering insurance products or annuities at an office of a national bank or on behalf of a national bank. The proposal would impose two types of information collection requirements on national banks. The first is the requirement that printed disclosure materials be modified to conform to the requirements of the regulation. The OCC estimates the burden associated with this start-up requirement as follows:

Estimated number of respondents: 1,949

Estimated number of responses: 1,949

Estimated burden hours per response: 10

Estimated total burden: 19,490 hours.

This estimate assumes 10 hours would be involved in the development of the disclosures required by this part for each national bank that sells insurance. The total burden will exceed 19,490 hours, however, because the proposal also requires that disclosures be provided to individual consumers in connection with particular transactions. Estimation of this burden requires the OCC to estimate the number of consumer transactions per bank (or entity selling on behalf of a bank) per year in which disclosures are required to be provided and the amount of time per transaction providing the disclosures will take. The OCC does not currently collect this type of information. We invite comment on what we should use in arriving at a revised estimate of total burden for purposes of the final rule.

Board: In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320, appendix A1), the Board reviewed the notice of proposed rulemaking under the authority delegated to the Board by the OMB. Comments on the collections of information should be sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551, with a copy to the Office of Management and Budget, Paperwork Reduction Project (7100-to be assigned), Washington, DC 20503.

The likely respondents are state member banks and any other persons selling, soliciting, advertising, or offering insurance products or annuities at an office of a state member bank or on behalf of a state member bank.

Estimated number of respondents: 1,010

Estimated number of responses: 553,079

Estimated burden hours per response: 5 minutes

Estimated total burden: 46,090 hours.

FDIC: The collections of information contained in the notice of proposed rulemaking will be submitted to the OMB in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. Comments on the collections of information should be sent to Steven F. Hanft, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429, with a copy to the Office of Management and Budget, Paperwork Reduction Project (3064-to be assigned), Washington, DC 20503.

The likely respondents are insured nonmember banks and any other persons selling, soliciting, advertising, or offering insurance products or annuities at an office of an insured nonmember bank or on behalf of an insured nonmember bank.

Estimated number of respondents: 5800

Estimated number of responses: 920,000

Estimated burden hours per response: 5 minutes

Estimated total burden: 76,667 hours.

OTS: The collection of information requirements contained in the notice of proposed rulemaking will be submitted to the OMB in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. Comments on the collection of information should be sent to the Dissemination Branch (1550-to be assigned), Office of Thrift Supervision, 1700 G Street, NW, Washington, DC

20552, with a copy to the Office of Management and Budget, Paperwork Reduction Project (1550-to be assigned), Washington, DC 20503.

The likely respondents are savings associations and any other persons selling, soliciting, advertising, or offering insurance products or annuities at an office of a savings association or on behalf of a savings association.

Estimated number of respondents: 1,097

Estimated number of responses: 567,432

Estimated average hours per response: 5 minutes

Estimated total burden: 47,286 hours.

B. Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act requires federal agencies either to certify that a proposed rule would not, if adopted in final form, have a significant impact on a substantial number of small entities or to prepare an initial regulatory flexibility analysis (IRFA) of the proposal and publish the analysis for comment. See 5 U.S.C. 603, 605. On the basis of the information currently available, the OCC is of the opinion that this proposal is unlikely to have a significant impact on a substantial number of small entities if it is adopted in final form. Because the proposal implements new legislation, however, the OCC lacks historical information specific to the requirements in the proposal on which to base estimates of cost. For this reason, the OCC has prepared the following IRFA. We invite comment on whether the assumptions used in the IRFA are accurate, as well as any compliance cost estimate that national banks can provide.

Reasons, Objectives, and Legal Basis for the Proposal

The OCC is issuing this proposal to implement section 305 of the G-L-B Act. A fuller discussion of the reasons for, objectives of, and legal basis for the proposed rules appears elsewhere in the Supplementary Information.

Reporting, Recordkeeping, and Compliance Requirements of the Proposal

The proposal requires national banks (and entities acting on behalf of national banks) to amend the written materials and Internet web sites they use in connection with the retail sale, solicitation, advertising, or offer of insurance products to consumers. The proposal also requires national banks (and entities acting on their behalf) to obtain from consumers acknowledgment that the consumer has received certain disclosures. The substance of these requirements is described in detail elsewhere in the Supplementary Information.²¹

The OCC believes that most national banks will be able to satisfy the disclosure provisions by including the information required to be disclosed in their written materials with minimal cost. We estimate that most banks maintain a 3 to 4 month inventory of those materials. The OCC expects that there will be several months between publication of this proposal and the effective date of the final rules, which should allow for most banks to use up their inventory of printed materials before the final rules take effect. Nevertheless, our analysis assumes that some banks may need to amend the written materials they have in inventory during an interim period between the effective date of the final rule and

²¹ The proposed rule also requires national banks to keep the area where the bank conducts insurance transactions physically separate from the areas where retail deposits are routinely accepted from the general public “to the extent practicable.” This requirement, which is worded like the requirement in the statute, leaves significant discretion to each national bank to determine what costs, if any, the bank must incur in order to avoid customer confusion.

the next regularly scheduled printing of those materials because their inventories will not be depleted during that time. These banks -- which are probably smaller banks that order written materials infrequently and in large quantities to obtain reduced rates on printing -- would therefore incur costs as a result of this requirement.

There are approximately 25 national banks that sell insurance products over the Internet. Our experience has been that Internet banks regularly upgrade their web sites. Adding the required disclosures could be done as part of a regular upgrade and would therefore present only minimal additional costs to the bank.

The primary cost associated with the requirement that a bank obtain from the consumer a written acknowledgment of the consumer's receipt of the disclosures is, in the OCC's opinion, likely to be the cost of developing the written acknowledgment. Banks that sell insurance products over the Internet should, as part of a regularly scheduled upgrade, be able to revise their web sites to include a series of "click throughs" that will require affirmation from the customer that he or she has received the required disclosures.

Description of the Small Entities to Which the Proposal Would Apply

As of January, 1999, 1,949 national banks or national bank subsidiaries were engaged in insurance activities that would bring them within the scope of coverage of the proposed rule. We estimate that 976 of the national banks that sold insurance as of January, 1999, had \$100 million or less in assets.²²

²² For Regulatory Flexibility Act purposes, small national banks are generally defined as those with assets under \$100 million.

Significant Alternatives to the Proposal

Section 305 of the G-L-B Act expressly prescribes the content of its implementing regulations. The OCC's proposal does not depart materially from the requirements of the statute. The statute does not authorize the OCC to provide exemptions or exceptions to its requirements for small national banks.

In preparing the proposal, the OCC has considered the burden on small national banks to the extent that it has the discretion to do so. The Supplementary Information describes and solicits comment on a number of alternatives that would reduce the regulatory burden. These include providing a more expansive definition of "electronic media" to allow even more flexibility in meeting the disclosure and consumer acknowledgment requirements, and ensuring that covered persons may fully utilize electronic signatures and other provisions of the E-Sign Act.

The OCC requests comment on whether these, or other approaches that are available in light of the express requirements of section 305, would be appropriate to reduce regulatory burden on small national banks.

Duplicative, Overlapping, or Conflicting Federal Rules

As used in the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994) (Interagency Statement), the term "nondeposit investment products," includes some products, such as annuities, that are covered by section 47 of FDIA and these proposed rules. The Interagency Statement provides, among other things, that institutions should disclose to customers that such products are not insured by the FDIC or the depository institution and are subject to

investment risk including possible loss of principal. It also provides that institutions should obtain acknowledgments from customers verifying that they have received and understand the disclosures. The Interagency Statement further provides that retail sales or recommendations of nondeposit investment products should be conducted in a location physically distinct from where retail deposits are taken, that nondeposit investment product sales personnel should receive adequate training, and that referral fees should be limited. The proposed rules do not appear to conflict materially with the Interagency Statement.

Board: The Regulatory Flexibility Act (5 U.S.C. 603) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking unless the proposed rule would not have a significant impact on a substantial number of small entities. Based on available data, the Board is unable to determine at this time whether the proposed rule would have a significant impact on a substantial number of small entities.

A description of the reasons why action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule are contained in the supplementary material above. The Board's proposed rule is virtually identical to the rules proposed by the other Federal banking agencies for the depository institutions over which they have primary supervisory authority.

The proposed rule would apply to all state member banks and any other person who sells, solicits, advertises, or offers an insurance product or annuity to an individual at an office of a state member bank or on behalf of the bank. As of year-end 1999, there were approximately 1,010 state member banks. The Board estimates that approximately 480 state member banks have assets less than \$100 million. Based on available data, the Board is unable to estimate the number of other persons

who engage in retail insurance activities at an office of a state member bank or on behalf of such a bank, or how many of these other persons are small entities.

As explained in the supplementary material above, the substantive provisions of the proposed rule are required by section 47 of the FDIA. Under the proposed rule, state member banks and other covered persons engaging in retail insurance activities must make disclosures to consumers and obtain the consumers' acknowledgment of the receipt of the disclosures. Banks that conduct insurance transactions by means of electronic media may be required to modify their current procedures for these transactions.

Some insurance products or annuities that are covered by the proposed rule may also be considered nondeposit investment products that are subject to the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994) ("Interagency Statement"). The Interagency Statement provides for consumer disclosure, acknowledgment, separation of activities, and personnel qualification requirements that are similar to the provisions of the proposed rule. The Board does not believe that the proposed rule would conflict materially with the Interagency Statement. The proposed rule incorporates the statutory prohibition on tying arrangements in section 106(b) of the Bank Holding Company Amendments of 1970 (12 U.S.C. 1972).

As explained above, the substantive provisions of proposed rule are required by section 47 of the FDIA. Section 47 applies to all depository institutions, regardless of size, and does not provide the Federal banking agencies with the authority to exempt a small institution from the requirements of the statute. Under section 47, the regulations required by that section do not extend to any subsidiary of a depository institution if the banking agencies determine that such an extension of the protections in the

statute is not necessary. The Board’s proposed rule would apply only to those subsidiaries of a state member bank that engage in retail insurance activities at an office of the bank or on behalf of the bank. Retail insurance activities by other types of subsidiaries that do not have the specified connection to the parent bank would be subject instead to the consumer protection requirements imposed by the functional regulator of those subsidiaries.

The Board requests comment on the burdens associated with the proposed rule and on whether there are appropriate alternative provisions would reduce the burdens on small institutions.

FDIC: The Regulatory Flexibility Act (5 U.S.C. 601-612) (RFA) requires the Agencies to either prepare an initial regulatory flexibility analysis (IRFA) with these proposed rule or certify that these proposed rules would not have a significant economic impact on a substantial number of small entities as defined in the RFA. The FDIC cannot, at this time, determine whether these proposed rules would have a significant economic impact on a substantial number of small entities as defined in the RFA.²³ Therefore, the FDIC includes the following IRFA.

Reasons for the proposed Rules

The FDIC is requesting comments on the proposed rules published pursuant to section 47 of the FDIA, which was added by section 305 of the G-L-B Act. Section 47 requires that the Agencies jointly prescribe consumer protection regulations that apply to retail sales practices, solicitations, advertising, or offers of any insurance product by a depository institution or any person

²³The RFA defines the term “small entity” in 5 U.S.C. 601 by reference to definitions published by the Small Business Administration (SBA). The SBA has defined a “small entity for banking purposes as a national or commercial bank, savings institution or credit union with less than \$100 million in assets.” *See* 13 CFR 121.201.

that is engaged in such activities at an office of the institution or on behalf of the institution. These requirements are expressly mandated by the G-L-B Act. It is the view of the FDIC that the G-L-B Act's requirements account for substantially all of the economic impact of the proposed rules.

Statement of Objectives and Legal Basis

The Supplementary Information section above contains the information. The legal basis for the proposed regulation is the G-L-B Act.

Description/Estimate of the Small Entities to Which the Proposed Rules Would Apply

The proposed rules at 12 C.F.R. Part 343 would apply to all FDIC-insured, state-chartered banks that are not members of the Federal Reserve System (approximately 5800). The FDIC estimates that approximately 3700 of this total are "small entities" as defined by the RFA. In addition, the FDIC estimates that all 3700 of these small banks sell, solicit, advertise, or offer certain types of insurance products or annuities to consumers.

The FDIC does not have data concerning how many other persons sell, solicit, advertise, or offer insurance products or annuities to consumers at an office of the bank or "on behalf of" the bank. Similarly, the FDIC does not have data regarding how many of these other persons are small entities.

The FDIC specifically seeks comments on the number and size of savings associations and other persons that are subject to the rule.

Projected Reporting, Recordkeeping and Other Compliance Requirements

The information collection requirements imposed by the G-L-B Act and the proposed rules are discussed above in the section titled "Paperwork Reduction Act."

General Requirements

As described more fully in the supplementary material provided above, the proposed rules: (1) contain new disclosure and consumer acknowledgment requirements; (2) prohibit coercion, tying, misrepresentations, and domestic violence discrimination; (3) require separation of deposit activities from insurance and annuity activities; (4) limit referral fees; and (5) require insurance and annuity sales personnel be appropriately qualified and licensed. The requirements of the proposed rules are mandated by section 47 of FDIA, as added by section 305 of the G-L-B Act. The proposed rules do not add to the statutory requirement in any significant way.

To minimize the compliance burdens, the proposal would:

- Not apply to subsidiaries of depository institutions, except where such subsidiaries are selling, soliciting, advertising, or offering insurance products or annuities to consumers at an office of a bank or on behalf of a bank. The FDIC is proposing this approach even though under section 47(a)(2) of FDIA, the FDIC could apply the requirements to subsidiaries if it determined that doing so was necessary to ensure the consumer protections provided by the statute.
- Take a narrow approach to defining when a person is selling, soliciting, advertising, or offering insurance products or annuities on behalf of a bank. The Agencies have, however, requested comment on an alternative approach to this issue.
- Only apply to retail sales, solicitations, advertisements, or offers of insurance products or annuities to individuals. The Agencies have, however, requested comment on an alternative approach to this issue.
- Define “office” narrowly only to include premises of a savings association where retail

deposits are accepted from the public.

- Permit disclosures to be provided through electronic media, obviating the need for oral or paper disclosures, where the consumer agrees and if the disclosures are provided in a format that the consumer may retain or obtain later.
- Remove impediments to telephone sales, solicitations, advertisements, and offers by permitting covered persons to provide disclosures orally by telephone and then timely follow up with written or electronic disclosures.
- Provide flexibility for covered persons to use a variety of means to provide disclosures that are readily understandable and call attention to the information.
- Permit consumers to use electronic media to acknowledge their receipt of disclosures.
- Not require disclosures in advertisements of a general nature describing or listing the services or products offered by the bank.

Many banks and other persons may already be partly or fully prepared to meet the requirements of these proposed rules. As discussed below, many of the requirements such as those on disclosure, consumer acknowledgments, physical separation of deposit activities from nondeposit activities, training of sales personnel, and limitations on referral fees are similar to existing standards applicable to banks and others who offer or sell nondeposit investment products. Compliance with other requirements, such as the prohibition on domestic violence discrimination, will call for similar types of resources as are used to comply with other existing nondiscrimination statutes such as the Equal Credit Opportunity Act, 15 U.S.C. 1691-1691f, and the Fair Housing Act, 42 U.S.C. 3601 et seq. Covered persons may need to provide further training or additional personnel, including personnel

skilled in clerical, computer, compliance, and legal matters.

The FDIC does not have a practicable or reliable basis for quantifying the costs of these proposed rules, or of any alternatives to the proposed rules. While the FDIC does not believe that the proposed rules would be burdensome, it is uncertain what the economic impact of compliance with the new requirements would be or how many persons would be subject to the rule. Rather than merely guess at the regulatory burden of these proposed rules, The FDIC solicits comment on these burdens and on ways to minimize the burdens, consistent with the G-L-B Act.

Identification of Duplicative, Overlapping , or Conflicting Federal Rules

While the scope of the proposed regulation implementing section 47 of FDIA is unique, there is some overlap with certain prior guidance and Federal statutes and rules. As used in the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994) (“Interagency Statement”), the term “nondeposit investment products,” includes some products, such as annuities, that are covered by section 47 of FDIA and these proposed rules. The Interagency Statement provides, among other things, that institutions should disclose to customers that such products are not issued by the FDIC or the depository institution and are subject to investment risk including possible loss of principal. It also provides that institutions should obtain acknowledgments from customers verifying that they have received and understand the disclosures. The Interagency Statement further provides that retail sales or recommendations of nondeposit investment products should be conducted in a location physically distinct from where retail deposits are taken, that nondeposit investment product sales personnel should receive adequate training, and that referral fees should be limited.

Other federal authorities that overlap with the proposed rules include the statutory prohibition

on tying arrangements in section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972). State consumer protection rules also may apply to sales, solicitations, advertisements, and offers of insurance products or annuities.

The proposed rules do not appear to conflict materially with the Interagency Statement or these other authorities. The FDIC seeks comment on any other Federal or State requirements that may duplicate, overlap, or conflict with the proposal.

Discussion of Significant Alternatives

The requirements in the proposed rules parallel those in section 47 of FDIA. The proposed rules would clarify the statutory requirements in some areas and restate the requirements in a more understandable manner in other areas. It would not impose any substantially different requirements. Since the requirements are set by statute, OTS has only limited discretion to consider alternatives. To the extent that the FDIC does have discretion, it has exercised that discretion to minimize the burden as discussed above.

Congress has decided that “any depository institution” and “any person” that is engaged in retail sales, solicitations, advertising, or offers of insurance products (or annuities) must comply. The G-L-B Act does not expressly authorize the FDIC to exempt small banks, affiliates, or persons from these requirements. The FDIC does not interpret the statute to permit such an exemption.

The supplementary material provided above describes and solicits comment on a number of alternatives that would reduce the regulatory burden. These include:

- Providing a more expansive definition of “electronic media” to provide even more flexibility in meeting the disclosure and consumer acknowledgment requirements.

- Making revisions to ensure that covered persons may fully utilize electronic signatures and other provisions of the E-Sign Act.

- Defining the term “insurance” in ways that could narrow or clarify the scope of the rule.

The FDIC requests comment on whether these or other alternatives would reduce the burdens and whether any exceptions for small institutions would be appropriate.

OTS: The Regulatory Flexibility Act requires federal agencies to either prepare an initial regulatory flexibility analysis (IRFA) with a proposed rule or certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. OTS cannot, at this time, determine whether these proposed rules would have a significant economic impact on a substantial number of small entities. Therefore, OTS includes the following IRFA.

A description of the reasons why OTS is considering this action and a statement of the objectives of, and legal basis for, these proposed rules, are contained in the supplementary materials provided above.

1. Small Entities to Which the Proposed Rules Would Apply

The proposed rules would apply to savings associations and any other persons who, at an office of a savings association or on behalf of a savings association, sell, solicit, advertise, or offer insurance products or annuities to consumers. The proposed rules would apply regardless of the size of the savings association or other person.

OTS calculates that of the approximately 1,097 savings associations, a maximum of 482 are small savings associations. Small savings associations are generally defined, for Regulatory Flexibility Act purposes, as those with assets under \$100 million. 13 CFR 121.201, Division H (1999). OTS

estimates that all of the small savings associations sell, solicit, advertise, or offer insurance products or annuities to consumers.

OTS does not have data on how many other persons sell, solicit, advertise, or offer insurance products or annuities to consumers at an office of a savings association or on behalf of a savings association. OTS does not have data on how many of these other persons are small entities.

OTS specifically seeks comment on the number and size of savings associations and other persons that are subject to the rule.

2. Requirements of the Proposed Rules

As described more fully in the supplementary material provided above, the proposed rules: (1) contain new disclosure and consumer acknowledgment requirements; (2) prohibit coercion, tying, misrepresentations, and domestic violence discrimination; (3) require separation of deposit activities from insurance and annuity activities; (4) limit referral fees; and (5) require insurance and annuity sales personnel be appropriately qualified and licensed. The requirements of the proposed rules are mandated by section 47 of FDIA, as added by section 305 of the G-L-B Act. The proposed rules do not add to the statutory requirement in any significant way.

To minimize the compliance burdens, the proposal would:

- Not apply to subsidiaries of depository institutions, except where such subsidiaries are selling, soliciting, advertising, or offering insurance products or annuities to consumers at an office of a savings association or on behalf of a savings association. OTS is proposing this approach even though under section 47(a)(2) of FDIA OTS could apply the requirements to subsidiaries if it determined that doing so was necessary to ensure the consumer protections provided by the statute.

- Take a narrow approach to defining when a person is selling, soliciting, advertising, or offering insurance products or annuities on behalf of a savings association. The Agencies have, however, requested comment on an alternative approach to this issue.

- Only apply to retail sales, solicitations, advertisements, or offers of insurance products or annuities to individuals. The Agencies have, however, requested comment on an alternative approach to this issue.

- Define “office” narrowly only to include premises of a savings association where retail deposits are accepted from the public.

- Permit disclosures to be provided through electronic media, obviating the need for oral or paper disclosures, where the consumer affirmatively consents and if the disclosures are provided in a format that the consumer may retain or obtain later.

- Remove impediments to telephone sales, solicitations, advertisements, and offers by permitting covered persons to provide certain disclosures orally by telephone and then timely follow up with written or electronic disclosures.

- Provide flexibility for covered persons to use a variety of means to provide disclosures that are readily understandable and call attention to the information.

- Permit consumers to use electronic media to acknowledge their receipt of disclosures.

- Not require disclosures in advertisements of a general nature describing or listing the services or products offered by the savings association.

Many savings associations and other persons may already be partly or fully prepared to meet the requirements of these proposed rules. As discussed below, many of the requirements such as those

on disclosure, consumer acknowledgments, physical separation of deposit activities from nondeposit activities, training of sales personnel, and limitations on referral fees are similar to existing standards applicable to savings associations and others who offer or sell nondeposit investment products. Persons selling, soliciting, advertising, or offering insurance products or annuities may have to revise printed materials and modify Internet web sites. Compliance with other requirements, such as the prohibition on domestic violence discrimination, will call for similar types of resources as are used to comply with other existing nondiscrimination statutes such as the Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691-1691f, and the Fair Housing Act, 42 U.S.C. Sec. 3601 et seq. Covered persons may need to provide further training or additional personnel, including personnel skilled in clerical, computer, compliance, and legal matters.

OTS does not have a practicable or reliable basis for quantifying the costs of these proposed rules, or of any alternatives to the rule. While OTS does not believe that the rule would be burdensome, it is uncertain what the economic impact of compliance with the new requirements would be or how many persons would be subject to the rule. Rather than merely guess at the regulatory burden of these proposed rules, OTS solicits comment on these burdens and on ways to minimize the burdens, consistent with the G-L-B Act.

3. Significant Alternatives

The requirements in the proposed rules parallel those in section 47 of FDIA. The proposed rules would clarify the statutory requirements in some areas and restate the requirements in a more understandable manner in other areas. It would not impose any substantially different requirements. Since the requirements are set by statute, OTS has only limited discretion to consider alternatives. To

the extent that OTS does have discretion, it has exercised that discretion to minimize the burden as discussed in section 2 above.

Congress has decided that “any depository institution” and “any person” that is engaged in retail sales, solicitations, advertising, or offers of insurance products (or annuities) must comply. The G-L-B Act does not expressly authorize OTS to exempt small savings associations, affiliates, or persons from these requirements. OTS does not interpret the statute to permit such an exemption.

The supplementary material provided above describes and solicits comment on a number of alternatives that would reduce the regulatory burden. These include:

- Providing a more expansive definition of “electronic media” to provide even more flexibility in meeting the disclosure and consumer acknowledgment requirements.
- Making revisions to ensure that covered persons may fully utilize electronic signatures and other provisions of the E-Sign Act.
- Defining the term “insurance” in ways that could narrow or clarify the scope of the rule.

OTS requests comment on whether these or other alternatives would reduce the burdens and whether any exceptions for small institutions would be appropriate.

4. Other Matters

While the scope of the proposed regulation implementing section 47 of FDIA is unique, there is some overlap with certain prior guidance and Federal statutes and rules. As used in the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994) (“Interagency Statement”), the term “nondeposit investment products,” includes some products, such as annuities, that are covered by section 47 of FDIA and these proposed rules. The Interagency Statement provides,

among other things, that institutions should disclose to customers that such products are not insured by the FDIC or the depository institution and are subject to investment risk including possible loss of principal. It also provides that institutions should obtain acknowledgments from customers verifying that they have received and understand the disclosures. The Interagency Statement further provides that retail sales or recommendations of nondeposit investment products should be conducted in a location physically distinct from where retail deposits are taken, that nondeposit investment product sales personnel should receive adequate training, and that referral fees should be limited.

Other federal authorities that overlap with the proposed rules include the statutory prohibition on tying arrangements in section 5(q) of the Home Owners' Loan Act (12 U.S.C. 1464(q)), and OTS's regulation prohibiting advertising that is inaccurate or makes misrepresentations (12 CFR 563.27). State consumer protection rules also may apply to sales, solicitations, advertisements, and offers of insurance products or annuities.

The proposed rules do not appear to conflict materially with the Interagency Statement or these other authorities. OTS seeks comment on any other Federal or State requirements that may duplicate, overlap, or conflict with the proposal.

C. Executive Order 12866

OCC: The Comptroller of the Currency has determined that these proposed rules, if adopted as a final rule, would not constitute a "significant regulatory action" for the purposes of Executive Order 12866. While the OCC's cost estimates are necessarily imprecise because the requirements included in the proposal result from new legislation, under the most conservative cost scenarios that the OCC can develop on the basis of available information, the impact of the proposal falls well short of the

thresholds established by the Executive Order.

OTS: OTS has determined that these proposed rules, if adopted as a final rule, would not constitute a "significant regulatory action" for the purposes of Executive Order 12866. The rule follows closely the requirements of section 305 of the G-L-B Act. Since the G-L-B Act establishes the minimum requirements for this activity, OTS has little discretion to propose regulatory options that might significantly reduce costs or other burdens.

Nevertheless, OTS acknowledges that the rule would impose costs on covered persons by requiring them to make disclosures and obtain consumer acknowledgments of those disclosures. While OTS does not believe that the impact of the rule would meet the thresholds of the Executive Order, OTS invites the thrift industry and the public to provide any cost estimates and related data that they think would be useful to the agency in evaluating the overall costs of the rule. OTS will review carefully the comments and cost data that you provide and will revisit the cost aspects of the G-L-B Act as implemented by this proposal in developing the final rule.

D. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. However, an agency is not required to assess the effects of its regulatory actions on the private

sector to the extent that such regulations incorporate requirements specifically set forth in law. 2 U.S.C. 1531. Most of the proposed rules' provisions are already mandated by the applicable provisions in section 305 of the G-L-B Act, which would become effective and binding on the private sector without a regulatory promulgation. Therefore, the OCC and OTS have determined that this proposed regulation will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, the OCC and OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

E. Executive Order 13132 — Federalism

OCC: Executive Order 13132 imposes certain requirements when an agency issues a regulation that has federalism implications or that preempts State law. Under the Executive Order, a regulation has federalism implications if it has substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. In general, the Executive Order requires the agency to adhere strictly to federal constitutional principles in developing rules that have federalism implications; provides guidance about an agency's interpretation of statutes that authorize regulations that preempt State law; and requires consultation with State officials before the agency issues a final rule that has federalism implications or that preempts State law.

In the OCC's opinion, it is not clear that Executive Order 13132 applies to the OCC's rules implementing section 305 of the G-L-B Act because the statute itself directs most of the significant policy choices that the Agencies have made -- that is, the statute expressly prescribes both the

substantive content and the preemptive effect of the rules. Moreover, the effect of the language of the express preemption provision in section 305 is to preserve State laws, subject to certain exceptions, rather than to preempt them. Under that provision, the insurance customer protections in the Agencies' rules generally will not have preemptive effect in a State where the State has in effect statutes, rules, regulations, orders, or interpretations that are inconsistent with or contrary to the regulations prescribed by the Agencies unless a provision in the Agencies' rules affords greater protection to customers than is afforded by a comparable State law. Section 305 prescribes a process for the Agencies to use in order to determine jointly whether a provision in the Agencies' regulations satisfies this "greater protection" standard. If the Agencies make that joint determination, and provide written notice to the affected State that its law is preempted, then that provision of State law will be preempted unless, within 3 years after the date that the Agencies issue the written notice, the State adopts legislation that overrides the preemption.

Elsewhere in the Supplementary Information, the OCC and the other Agencies have asked for comment on the best way to administer these provisions in order to reduce uncertainty on the part of the institutions we supervise about whether federal or State standards apply. Regardless of how the Agencies address this practical issue, however, the federalism implications and the preemptive effect of the OCC's rules implementing section 305 depend, in the first instance, on how the Agencies' final rules compare with a particular State's laws and, ultimately, on whether a State adopts the "opt-out" legislation that section 305 permits.

Nonetheless, the OCC plans for its final rules to satisfy the requirements of the Executive Order. If an agency promulgates a regulation that has federalism implications and preempts State law,

the Executive Order imposes upon the agency requirements to consult with State and local officials; to publish a “federalism summary impact statement,” and to make written comments from State and local officials available to the Director of the Office of Management and Budget (OMB).

Separately, section 305 requires the Agencies to consult with State insurance regulators before issuing final implementing regulations. As described elsewhere in the Supplementary Information, the OCC and the other Agencies have consulted with the NAIC and provided them with an advance copy of the proposal. The OCC has provided an advance copy of the proposal to the Conference of State Bank Supervisors. The OCC will include in the preamble to the final rules a federalism summary impact statement that comports with the requirements of the Executive Order, and we will make any written comments we receive from State or local officials available to the Director of OMB.

OTS: Executive Order 13132 imposes certain requirements on an agency when formulating and implementing policies that will have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, or taking actions that preempt state law. Section 47(g) of FDIA, 12 U.S.C. 1831x, as added by section 305 of the G-L-B Act, provides that the insurance consumer protections in the Agencies’ rules generally will not apply to retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by any savings association or any person that is engaged in such activities at an office of the savings association or on behalf of the savings association in a State where the State has in effect statutes, regulations, orders, or interpretations that are inconsistent with or contrary to the provisions of the federal regulations. However, if the federal regulations afford greater protection for insurance consumers than a comparable

State law, rule, regulation, order, or interpretation, the State provision may be preempted in accordance with certain specified procedures.

OTS has determined that application of these statutorily-mandated provisions, through its proposed rule, will have federalism implications and may result in the preemption of state law. Section 47(a) of FDIA obligates OTS to issue this regulation to implement section 305 of the G-L-B Act, which includes section 47(g) of FDIA. Consistent with section 47(a)(3) of FDIA and section 6(c) of Executive Order 13132, the Agencies have consulted with the National Association of Insurance Commissioners (NAIC), as indicated in the Supplementary Information above. The Agencies provided an advance copy of the proposed rule to the NAIC and the NAIC commented that the rule should expressly acknowledge the applicability of state insurance requirements to banks and savings associations offering or selling insurance. In response, the Agencies have indicated in the preamble that State consumer protection rules also may apply to bank and savings association insurance sales. OTS has also provided a copy of the proposed rule to the Conference of State Bank Supervisors. OTS invites comment on the federalism and preemption issues implicated by this proposed rule.

Solicitation of comments on use of “plain language”

Section 722 of the G-L-B Act requires the Federal banking Agencies to use “plain language” in all proposed and final rules published after January 1, 2000. We invite your comments on how to make these proposed rules easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could the material be better organized?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly

stated?

- Does the rule contain technical language or jargon that isn't clear? If not, which language requires clarification?

- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

- Would more (but shorter) sections be better? If so, which sections should be changed?

- What else could we do to make the rule easier to understand?

OCC Comment Solicitation on Impact on Community Banks

The OCC also seeks comments on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of the proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

List of Subjects

12 CFR Part 14

Banks, banking; Consumer protection, Insurance; National banks.

12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Consumer protection, Crime, Currency, Federal Reserve System, Insurance, Mortgages, Reporting and recordkeeping

requirements, Securities.

12 CFR Part 343

Banks, banking; Insurance consumer protection.

12 CFR Part 536

Insurance, Consumer protection, Reporting and recordkeeping requirements, Savings associations.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the joint preamble, the OCC proposes to amend chapter I of title 12 of the Code of Federal Regulations by adding a new part 14 to read as follows:

PART 14 -- CONSUMER PROTECTION IN SALES OF INSURANCE

Sec.

14.10 Purpose and scope.

14.20 Definitions.

14.30 Prohibited practices.

14.40 What a covered person must disclose.

14.50 Where insurance activities may take place.

14.60 Qualification and licensing requirements for insurance sales personnel.

APPENDIX TO PART 14 - CONSUMER GRIEVANCE PROCESS.

Authority: 12 U.S.C. 1 *et seq.*, 24(Seventh), 92, 93a, 1818, and 1831x.

§ 14.10 Purpose and scope.

This part establishes consumer protections in connection with retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by any national bank or by any person that is engaged in such activities at an office of the national bank or on behalf of the bank. For purposes of this part, the terms “national bank” or “bank” includes a Federal Branch or agency of a foreign bank as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101, *et seq.*) For purposes of § 5.34(e)(3) of this chapter, an operating subsidiary is subject to this part only to the extent that it sells, solicits, advertises, or offers insurance products or annuities at an office of a national bank or on behalf of a national bank.

§ 14.20 Definitions.

As used in this part:

(a) Affiliate means a company that controls, is controlled by, or is under common control with another company.

(b) Company means any corporation, partnership, business trust, association or similar organization, or any other trust (unless by its terms the trust must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust). It does not include any corporation the majority of the shares of which are owned by the United States or by any State, or a qualified family partnership, as defined in section 2(o)(10) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(o)(10)).

(c) Consumer means an individual who obtains, applies to obtain, or is solicited to obtain insurance products or annuities from a covered person.

(d) Control of a company has the same meaning as in section 3(w)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(5)).

(e) Covered person means a national bank or Federal branch or any other person selling, soliciting, advertising, or offering insurance products or annuities to a consumer at an office of the national bank, or on behalf of the bank. For purposes of this definition, activities on behalf of a national bank include activities where a person, whether at an office of the bank or at another location sells, solicits, advertises, or offers an insurance product or annuity and:

(1) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the national bank;

(2) The depository institution receives commissions or fees, in whole or in part, derived from the sale of an insurance product or annuity as a result of cross-marketing or referrals by the bank or an affiliate;

(3) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the bank or use its corporate logo or corporate name; or

(4) The sale, solicitation, advertising, or offer of an insurance product or annuity takes place at an off-premises site, such as a kiosk, that identifies or refers to the bank or uses its corporate logo or corporate name.

(f) Domestic violence means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

(1) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault;

(2) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;

(3) Subjecting another person to false imprisonment; or

(4) Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

(g) Electronic media includes any means for transmitting messages electronically between a covered person and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(h) Office means the premises of a national bank where retail deposits are accepted from the public.

(i) Subsidiary has the same meaning as in section 3(w)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(4)).

§ 14.30 Prohibited practices

(a) Anticoercion and antitying rules. A covered person may not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972), is conditional upon either:

(1) The purchase of an insurance product or annuity from the national bank or any of its affiliates; or

(2) An agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) Prohibition on misrepresentations generally. A covered person may not engage in any practice or use any advertisement at any office of, or on behalf of, the bank or a subsidiary of the bank that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The fact that any insurance product or annuity sold or offered for sale by a covered person or any subsidiary of the bank is not backed by the Federal government or the bank, or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation;

(2) In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or

(3) In the case of a bank or subsidiary of the bank at which insurance products or annuities are sold or offered for sale, the fact that:

(i) The approval of an extension of credit to a consumer by the bank or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the bank or a subsidiary of the bank; and

(ii) The consumer is free to purchase the insurance product or annuity from another source.

(c) Prohibition on domestic violence discrimination. A covered person may not, with regard to any insurance underwriting, pricing, renewal, or scope of coverage decision, or payment of insurance claims, on a life or health insurance product consider as a criterion the status of the person applying for

the insurance, or the person who is insured, as a victim of domestic violence or a provider of services to domestic violence victims, except as required or expressly permitted under State law.

§ 14.40 What a covered person must disclose.

(a) Disclosures. In connection with the initial purchase of an insurance product or annuity by a consumer from a covered person, a covered person must disclose to the consumer that:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the national bank or (if applicable) an affiliate of the bank;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the national bank, or (if applicable) an affiliate of the bank;

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value; and

(4) The national bank may not condition an extension of credit on either:

(i) The consumer's purchase of an insurance product or annuity from the bank or any of its affiliates; or

(ii) The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) Timing and method of disclosures. (1) In general. (i) The disclosures required by paragraph (a) of this section must be provided orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer.

(ii) The disclosures required by paragraph (a)(4) of this section must also be made orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity will be solicited, offered, or sold. If a covered person takes an application for such credit by telephone, the covered person may provide the written disclosure required by paragraph (a)(4) of this section by mail, provided the covered person mails it to the consumer within three days, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(2) Electronic form of disclosures. (i) Where the consumer affirmatively consents, a covered person may provide the written disclosures required by paragraph (a) of this section through electronic media instead of on paper, if they are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(ii) If the sale of an insurance product or annuity is conducted entirely through the use of electronic media, and the disclosures are provided electronically, a covered person is not required to provide disclosures orally.

(3) Disclosures must be readily understandable. The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For instance, a covered person may use the following disclosures, as appropriate and consistent with paragraph (a) of this section:

- NOT A DEPOSIT
- NOT FDIC-INSURED
- NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY
- NOT GUARANTEED BY THE BANK

- MAY GO DOWN IN VALUE.

(4) Disclosures must be meaningful. (i) A covered person must provide the disclosures required by paragraph (a) of this section in a meaningful form. A covered person has not provided the disclosures in a meaningful form if the covered person merely states to the consumer that the required disclosures are available in printed material, but does not provide the printed material when required and does not orally disclose the information to the consumer when required. A covered person provides the disclosures in a meaningful form if the covered person provides the disclosures in printed form and orally discloses the information to the consumer, or if the covered person provides the disclosures through electronic media under paragraph (b)(2) of this section and complies with paragraph (b)(4)(ii) of this section.

(ii) With respect to those disclosures made through electronic media for which paper or oral disclosures are not required, the disclosures are not meaningfully provided if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

(5) Consumer acknowledgment. A covered person must obtain from the consumer, at the time a consumer receives the disclosures required under this section or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. A consumer who has received disclosures through electronic media may acknowledge receipt of the disclosures electronically or in paper form.

(c) Advertisements and other promotional material. The disclosures required by this section are not required in advertisements of a general nature describing or listing the services or products offered by the national bank.

§ 14.50 Where insurance activities may take place.

(a) General rule. A national bank must, to the extent practicable, keep the area where the bank conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance product or annuity sales activities occur, and clearly delineate and distinguish those areas from the areas where the national bank's retail deposit-taking activities occur.

(b) Referrals. Any person who accepts deposits from the public in an area where such transactions are routinely conducted in the bank may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

§ 14.60 Qualification and licensing requirements for insurance sales personnel.

A national bank may not permit any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

APPENDIX TO PART 14 -- CONSUMER GRIEVANCE PROCESS.

Any consumer who believes that any national bank or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the national bank

or on behalf of the bank has violated the requirements of this part should contact the Customer Assistance Group, Office of the Comptroller of the Currency at the following address: 1301 McKinney Street, Suite 3710, Houston, Texas 77010-3031.

Dated: August 14, 2000

John D. Hawke, Jr.

Comptroller of the Currency.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set out in the joint preamble, the Board proposes to amend part 208, chapter II, title 12 of the Code of Federal Regulations as follows:

PART 208 – MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 is proposed to be revised to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321-338a, 371d, 461, 481-486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p-1, 1831r-1, 1831w, 1831x, 1835a, 1882, 2901-2907, 3105, 3310, 3331-3351, and 3906-3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o-4(c)(5), 78q, 78q-1, and 78w; 31 U.S.C. 5318, 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. The existing subpart H – Interpretations is proposed to be redesignated as subpart I.

3. A new subpart H is proposed to be added to read as follows:

Subpart H – Consumer Protection in Sales of Insurance

Sec.

208.81 Purpose and scope.

208.82 Definitions for purposes of this subpart.

208.83 Prohibited practices.

208.84 What you must disclose.

208.85 Where insurance activities may take place.

208.86 Qualification and licensing requirements for insurance sales personnel.

APPENDIX TO SUBPART H - CONSUMER GRIEVANCE PROCESS

§208.81 Purpose and scope. This subpart establishes consumer protections in connection with retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by any state member bank or by any person that is engaged in such activities at an office of the state member bank or on behalf of the bank.

§208.82 Definitions for purposes of this subpart.

As used in this subpart:

(a) Affiliate means a company that controls, is controlled by, or is under common control with another company.

(b) Company means any corporation, partnership, business trust, association or similar organization, or any other trust (unless by its terms the trust must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust). It does not include any corporation the majority of the shares of which are owned by the

United States or by any State, or a qualified family partnership, as defined in section 2(o)(10) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(o)(10)).

(c) Consumer means an individual who obtains, applies to obtain, or is solicited to obtain insurance products or annuities from you.

(d) Control of a company has the same meaning as in section 3(w)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(5)).

(e) Domestic violence means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

(1) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault;

(2) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;

(3) Subjecting another person to false imprisonment; or

(4) Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

(f) Electronic media includes any means for transmitting messages electronically between you and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(g) Office means the premises of a state member bank where retail deposits are accepted from the public.

(h) Subsidiary has the same meaning as in section 3(w)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(4)).

(i) You means a state member bank or any other person selling, soliciting, advertising, or offering insurance products or annuities to a consumer at an office of the state member bank, or on behalf of the bank. For purposes of this definition, activities on behalf of a state member bank include activities where a person, whether at an office of the bank or at another location sells, solicits, advertises, or offers an insurance product or annuity and:

(1) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the state member bank;

(2) The state member bank receives commissions or fees, in whole or in part, derived from the sale of an insurance product or annuity as result of cross-marketing or referrals by the bank or an affiliate;

(3) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the bank or use its corporate logo or corporate name; or

(4) The sale, solicitation, advertising, or offer of an insurance product or annuity takes place at an off-premises site, such as a kiosk, that identifies or refers to the bank or uses its corporate logo or corporate name.

§208.83 Prohibited practices.

(a) Anticoercion and antitying rules. You may not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972), is conditional upon either:

(1) The purchase of an insurance product or annuity from the state member bank or any of its affiliates; or

(2) An agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) Prohibition on misrepresentations generally. You may not engage in any practice or use any advertisement at any office of, or on behalf of, the bank or a subsidiary of the bank that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The fact that any insurance product or annuity sold or offered for sale by you or any subsidiary of the bank is not backed by the Federal government or the bank, or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation;

(2) In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or

(3) In the case of a bank or subsidiary of the bank at which insurance products or annuities are sold or offered for sale, the fact that:

(i) The approval of an extension of credit to a consumer by the bank or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the bank or a subsidiary of the bank; and

(ii) The consumer is free to purchase the insurance product or annuity from another source.

(c) Prohibition on domestic violence discrimination. You may not, with regard to any insurance underwriting, pricing, renewal, or scope of coverage decision, or payment of insurance claims, on a life or health insurance product consider as a criterion the status of the person applying for the insurance, or the person who is insured, as a victim of domestic violence or a provider of services to domestic violence victims, except as required or expressly permitted under State law.

§208.84 What you must disclose.

(a) Disclosures. In connection with the initial purchase of an insurance product or annuity by a consumer from you, you must disclose to the consumer that:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the state member bank or (if applicable) an affiliate of the bank;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the state member bank, or (if applicable) an affiliate of the bank;

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value; and

(4) The state member bank may not condition an extension of credit on either:

(i) The consumer's purchase of an insurance product or annuity from the bank or any of its affiliates; or

(ii) The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) Timing and method of disclosures. (1) In general. (i) The disclosures required by paragraph (a) of this section must be provided orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer.

(ii) The disclosures required by paragraph (a)(4) of this section must also be made orally and in writing at the time the consumer applies for an extension of credit in connection with which insurance will be solicited, offered, or sold. If you take an application for such credit by telephone, you may provide the written disclosure required by paragraph (a)(4) of this section by mail, provided you mail it to the consumer within three days, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(2) Electronic form of disclosures. (i) Where the consumer affirmatively consents, you may provide the written disclosures required by paragraph (a) of this section through electronic media instead of on paper, if they are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(ii) If the sale of an insurance product or annuity is conducted entirely through the use of electronic media, and the disclosures are provided electronically, you are not required to provide disclosures orally.

(3) Disclosures must be readily understandable. The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and

significance of the information provided. For instance, you may use the following disclosures, as appropriate and consistent with paragraph (a) of this section:

- NOT A DEPOSIT
- NOT FDIC-INSURED
- NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY
- NOT GUARANTEED BY THE BANK
- MAY GO DOWN IN VALUE.

(4) Disclosures must be meaningful. (i) You must provide the disclosures required by paragraph (a) of this section in a meaningful form. You have not provided the disclosures in a meaningful form if you merely state to the consumer that the required disclosures are available in printed material, but you do not provide the printed material when required and do not orally disclose the information to the consumer when required. You provide the disclosures in a meaningful form if you provide the disclosures in printed form and orally disclose the information to the consumer, or if you provide the disclosures through electronic media under paragraph (b)(2) of this section and comply with paragraph (b)(4)(ii) of this section.

(ii) With respect to those disclosures made through electronic media for which paper or oral disclosures are not required, the disclosures are not meaningfully provided if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

(5) Consumer acknowledgment. You must obtain from the consumer, at the time a consumer receives the disclosures required under this section or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer

received the disclosures. A consumer who has received disclosures through electronic media may acknowledge receipt of the disclosures electronically or in paper form.

(c) Advertisements and other promotional material. The disclosures required by this section are not required in advertisements of a general nature describing or listing the services or products offered by the state member bank.

§208.85 Where insurance activities may take place.

(a) General rule. A state member bank must, to the extent practicable, keep the area where the bank conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance product or annuity sales activities occur, and clearly delineate and distinguish those areas from the areas where the state member bank's retail deposit-taking activities occur.

(b) Referrals. Any person who accepts deposits from the public in an area where such transactions are routinely conducted in the bank may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

§208.86 Qualification and licensing requirements for insurance sales personnel.

A state member bank may not permit any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified

and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

APPENDIX TO SUBPART H -- CONSUMER GRIEVANCE PROCESS

Any consumer who believes that any state member bank or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the state member bank or on behalf of the bank has violated the requirements of this subpart should contact the Consumer Complaints Section, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System at the following address: 20th & C Streets, NW, Washington, D.C. 20551.

By the Board of Governors of the Federal Reserve System, August 15, 2000.

Jennifer J. Johnson
Secretary of the Board

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set out in the joint preamble, the Federal Deposit Insurance Corporation proposes to amend chapter III of title 12 of the Code of Federal Regulations by adding a new part 343 to read as follows:

PART 343 -- Consumer Protection in Sales of Insurance

Sec.

343.10 Purpose and scope.

343.20 Definitions.

343.30 Prohibited practices.

343.40 What a covered person must disclose.

343.50 Where insurance activities may take place.

343.60 Qualification and licensing requirements for insurance sales personnel.

Appendix to Part 343 -- Consumer Grievance Process.

Authority: 12 U.S.C. 1819 (Seventh and Tenth); 12 U.S.C. 1831x.

§ 343.10 Purpose and scope.

This part establishes consumer protections in connection with retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by any bank or by any person that is engaged in such activities at an office of the bank or on behalf of the bank.

§ 343.20 Definitions.

As used in this part:

(a) Affiliate means a company that controls, is controlled by, or is under common control with another company.

(b) Bank means an FDIC-insured, state-chartered commercial or savings bank that is not a member of the Federal Reserve System and for which the FDIC is the appropriate federal banking agency pursuant to section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(c) Company means any corporation, partnership, business trust, association or similar organization, or any other trust (unless by its terms the trust must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust). It does not include any corporation the majority of the shares of which are owned by the United States or by any state, or a qualified family partnership, as defined in section 2(o)(10) of the Bank Holding Company Act of 1956, as amended (12 USC 1841(o)(10)).

(d) Consumer means an individual who obtains, applies to obtain, or is solicited to obtain insurance products or annuities from a covered person.

(e) Control of a company has the same meaning as in section 3(w)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(5)).

(f) Covered person or you means a bank, as defined in paragraph (b) of this section, or any other person selling, soliciting, advertising, or offering insurance products or annuities to a consumer at an office of the bank, or on behalf of the bank. For purposes of this definition, activities on behalf of a

bank include activities where a person, whether at an office of the bank or at another location sells, solicits, advertises, or offers an insurance product or annuity and:

(1) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the bank;

(2) The depository institution receives commissions or fees, in whole or in part, derived from the sale of an insurance product or annuity as a result of cross-marketing or referrals by the bank or an affiliate;

(3) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the bank or use its corporate logo or corporate name; or

(4) The sale, solicitation, advertising, or offer of an insurance product or annuity takes place at an off-premises site, such as a kiosk, that identifies or refers to the bank or uses its corporate logo or corporate name.

(g) Domestic violence means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

(1) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault;

(2) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;

(3) Subjecting another person to false imprisonment; or

(4) Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

(h) Electronic media includes any means for transmitting messages electronically between a covered person and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(i) Office means the premises of a bank where retail deposits are accepted from the public.

(j) Subsidiary has the same meaning as in section 3(w)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(4)).

§343.30 Prohibited practices.

(a) Anticoercion and anti-tying rules. A covered person may not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972), is conditional upon either:

- (1) The purchase of an insurance product or annuity from the bank or any of its affiliates; or
- (2) An agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) Prohibition on misrepresentations generally. A covered person may not engage in any practice or use any advertisement at any office of, or on behalf of, the bank or a subsidiary of the bank that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The fact that any insurance product or annuity sold or offered for sale by a covered person or any subsidiary of the bank is not backed by the federal government or the bank, or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation;

(2) In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or

(3) In the case of a bank or subsidiary of the bank at which insurance products or annuities are sold or offered for sale, the fact that:

(i) The approval of an extension of credit to a consumer by the bank or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the bank or a subsidiary of the bank; and

(ii) The consumer is free to purchase the insurance product or annuity from another source.

(c) Prohibition on domestic violence discrimination. A covered person may not, with regard to any insurance underwriting, pricing, renewal, or scope of coverage decision, or payment of insurance claims, on a life or health insurance product consider as a criterion the status of the person applying for the insurance, or the person who is insured, as a victim of domestic violence or a provider of services to domestic violence victims, except as required or expressly permitted under state law.

§343.40 What a covered person must disclose.

(a) Disclosures. In connection with the initial purchase of an insurance product or annuity by a consumer from a covered person, a covered person must disclose to the consumer that:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the bank or (if applicable) an affiliate of the bank;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the bank, or (if applicable) an affiliate of the bank;

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value; and

(4) The bank may not condition an extension of credit on either:

(i) The consumer's purchase of an insurance product or annuity from the bank or any of its affiliates; or

(ii) The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) Timing and method of disclosures. (1) In general. (i) The disclosures required by paragraph (a) of this section must be provided orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer.

(ii) The disclosures required by paragraph (a)(4) of this section must also be made orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity will be solicited, offered, or sold. If a covered person takes an application for such credit by telephone, the covered person may provide the written disclosure required by paragraph (a)(4) of this section by mail, provided the covered person mails it to the consumer within three days, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(2) Electronic form of disclosures. (i) Where the consumer affirmatively consents, a covered person may provide the written disclosures required by paragraph (a) of this section through electronic media instead of on paper, if they are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(ii) If the sale of an insurance product or annuity is conducted entirely through the use of electronic media, and the disclosures are provided electronically, a covered person is not required to provide disclosures orally.

(3) Disclosures must be readily understandable. The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For instance, a covered person may use the following disclosures, as appropriate and consistent with paragraph (a) of this section:

- NOT A DEPOSIT
- NOT FDIC-INSURED
- NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY
- NOT GUARANTEED BY THE BANK [OR SAVINGS ASSOCIATION]
- MAY GO DOWN IN VALUE.

(4) Disclosures must be meaningful. (i) A covered person must provide the disclosures required by paragraph (a) of this section in a meaningful form. A covered person has not provided the disclosures in a meaningful form if the covered person merely states to the consumer that the required disclosures are available in printed material, but does not provide the printed material when required and does not orally disclose the information to the consumer when required. A covered person

provides the disclosures in a meaningful form if the covered person provides the disclosures in printed form and orally discloses the information to the consumer, or if the covered person provides the disclosures through electronic media under paragraph (b)(2) of this section and complies with paragraph (b)(4)(ii) of this section.

(ii) With respect to those disclosures made through electronic media for which paper or oral disclosures are not required, the disclosures are not meaningfully provided if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

(5) Consumer acknowledgment. A covered person must obtain from the consumer, at the time a consumer receives the disclosures required under this section or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. A consumer who has received disclosures through electronic media may acknowledge receipt of the disclosures electronically or in paper form.

(c) Advertisements and other promotional material. The disclosures required by this section are not required in advertisements of a general nature describing or listing the services or products offered by the bank.

§343.50 Where insurance activities may take place.

(a) General rule. A bank must, to the extent practicable, keep the area where the bank conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance

product or annuity sales activities occur, and clearly delineate and distinguish those areas from the areas where the bank's retail deposit-taking activities occur.

(b) Referrals. Any person who accepts deposits from the public in an area where such transactions are routinely conducted in the bank may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

§343.60 Qualification and licensing requirements for insurance sales personnel.

A bank may not permit any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable state insurance licensing standards with regard to the specific products being sold or recommended.

APPENDIX TO PART 343 -- CONSUMER GRIEVANCE PROCESS.

Any consumer who believes that any bank or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the bank or on behalf of the bank has violated the requirements of part 343 should contact the Division of Compliance and Consumer Affairs, Federal Deposit Insurance Corporation, at the following address: 550 17th Street, NW., Washington, DC 20429, or telephone 202-942-3100 or 800-934-3342, or e-mail dcainternet@fdic.gov.

By order of the Board of Directors.

Dated at Washington, DC, this 14th date of August, 2000

FEDERAL DEPOSIT INSURANCE CORPORATION

James D. LaPierre,
Deputy Executive Secretary
(SEAL)

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons set out in the joint preamble, OTS proposes to amend chapter V of title 12 of the Code of Federal Regulations by adding a new part 536 to read as follows:

PART 536—Consumer Protection in Sales of Insurance

Sec.

536.10 Purpose and scope.

536.20 Definitions.

536.30 Prohibited practices.

536.40 What you must disclose.

536.50 Where insurance activities may take place.

536.60 Qualification and licensing requirements for insurance sales personnel.

APPENDIX TO PART 536 — CONSUMER GRIEVANCE PROCESS.

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, and 1831x.

§ 536.10 Purpose and scope.

This part establishes consumer protections in connection with retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by any savings association or by any person that is engaged in such activities at an office of a savings association or on behalf of a savings association. For purposes of section 559.3(h) of this chapter, an operating subsidiary is subject to this part only to the extent that it sells, solicits, advertises, or offers insurance products or annuities at an office of a savings association or on behalf of a savings association.

§ 536.20 Definitions.

As used in this part:

Affiliate means a company that controls, is controlled by, or is under common control with another company.

Company means any corporation, partnership, business trust, association or similar organization, or any other trust (unless by its terms the trust must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust). It does not include any corporation the majority of the shares of which are owned by the United States or by any State, or a qualified family partnership, as defined in section 2(o)(10) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(o)(10)).

Consumer means an individual who obtains, applies to obtain, or is solicited to obtain insurance products or annuities from you.

Control of a company has the same meaning as in section 3(w)(5) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1813(w)(5)).

Domestic violence means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

- (1) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault;
- (2) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;
- (3) Subjecting another person to false imprisonment; or
- (4) Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

Electronic media includes any means for transmitting messages electronically between you and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

Office means the premises of a savings association where retail deposits are accepted from the public.

Subsidiary has the same meaning as in section 3(w)(4) of the FDIA (12 U.S.C. 1813(w)(4)).

You means a savings association, as defined in § 561.43 of this chapter, or any other person selling, soliciting, advertising, or offering insurance products or annuities to a consumer at an office of a savings association, or on behalf of a savings association. For purposes of this definition, activities on behalf of a savings association include activities where a person, whether at an office of a savings

association or at another location sells, solicits, advertises, or offers an insurance product or annuity and:

(1) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of a savings association;

(2) A savings association receives commissions or fees, in whole or in part, derived from the sale of an insurance product or annuity as a result of cross-marketing or referrals by the savings association or its affiliate;

(3) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to a savings association or use its corporate logo or corporate name; or

(4) The sale, solicitation, advertising, or offer of an insurance product or annuity takes place at an off-premises site, such as a kiosk, that identifies or refers to a savings association or uses its corporate logo or corporate name.

§ 536.30 Prohibited practices.

(a) Anticoercion and antitying rules. As provided in section 5(q) of the Home Owners' Loan Act (12 U.S.C. 1464(q)), you may not engage in any practice that would lead a consumer to believe that an extension of credit is conditional upon either:

(1) The purchase of an insurance product or annuity from a savings association or any of its affiliates; or

(2) An agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) Prohibition on misrepresentations generally. You may not engage in any practice or use any advertisement at any office of, or on behalf of, a savings association or a subsidiary of a savings association that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The fact that any insurance product or annuity sold or offered for sale by you or any subsidiary of a savings association is not backed by the Federal government or a savings association, or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation;

(2) In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or

(3) In the case of a savings association or subsidiary of a savings association at which insurance products or annuities are sold or offered for sale, the fact that:

(i) The approval of an extension of credit to a consumer by the savings association or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the savings association or a subsidiary of the savings association; and

(ii) The consumer is free to purchase the insurance product or annuity from another source.

(c) Prohibition on domestic violence discrimination. You may not, with regard to any insurance underwriting, pricing, renewal, or scope of coverage decision, or payment of insurance claims, on a life or health insurance product consider as a criterion the status of the person applying for the insurance, or

the person who is insured, as a victim of domestic violence or a provider of services to domestic violence victims, except as required or expressly permitted under State law.

§ 536.40 What you must disclose.

(a) Disclosures. In connection with the initial purchase of an insurance product or annuity by a consumer from you, you must disclose to the consumer that:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, a savings association or (if applicable) an affiliate of a savings association;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, a savings association, or (if applicable) an affiliate of a savings association;

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value; and

(4) A savings association may not condition an extension of credit on either:

(i) The consumer's purchase of an insurance product or annuity from a savings association or any of its affiliates; or

(ii) The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) Timing and method of disclosures. (1) In general. (i) You must provide the disclosures required by paragraph (a) of this section orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer.

(ii) You must also provide the disclosure required by paragraph (a)(4) of this section orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity will be solicited, offered, or sold. If you take an application for such credit by telephone, you may provide the written disclosure required by paragraph (a)(4) of this section by mail, provided you mail it to the consumer within three days, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(2) Electronic form of disclosures. (i) Where the consumer affirmatively consents, you may provide the written disclosures required by paragraph (a) of this section through electronic media instead of on paper, if the disclosures are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(ii) If the sale of an insurance product or annuity is conducted entirely through the use of electronic media, and the disclosures are provided electronically, you are not required to provide disclosures orally.

(3) Disclosures must be readily understandable. The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For instance, you may use the following disclosures, as appropriate and consistent with paragraph (a) of this section:

(i) NOT A DEPOSIT.

(ii) NOT FDIC-INSURED.

(iii) NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY.

(iv) NOT GUARANTEED BY THE SAVINGS ASSOCIATION.

(v) **MAY GO DOWN IN VALUE.**

(4) Disclosures must be meaningful. (i) You must provide the disclosures required by paragraph (a) of this section in a meaningful form. You have not provided the disclosures in a meaningful form if you merely state to the consumer that the required disclosures are available in printed material, but you do not provide the printed material when required and do not orally disclose the information to the consumer when required. You provide the disclosures in a meaningful form if you provide the disclosures in printed form and orally disclose the information to the consumer, or if you provide the disclosures through electronic media under paragraph (b)(2) of this section and comply with paragraph (b)(4)(ii) of this section.

(ii) With respect to those disclosures made through electronic media for which you are not required to provide paper or oral disclosures, you have not meaningfully provided the disclosures if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

(5) Consumer acknowledgment. You must obtain from the consumer, at the time a consumer receives the disclosures required under this section or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. A consumer who has received disclosures through electronic media may acknowledge receipt of the disclosures electronically or in paper form.

(c) Advertisements and other promotional material. The disclosures required by this section are not required in advertisements of a general nature describing or listing the services or products offered by the savings association.

§ 536.50 Where insurance activities may take place.

(a) General rule. A savings association must, to the extent practicable, keep the area where the savings association conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance product or annuity sales activities occur, and clearly delineate and distinguish those areas from the areas where the savings association's retail deposit-taking activities occur.

(b) Referrals. Any person who accepts deposits from the public in an area where such transactions are routinely conducted in a savings association may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

§ 536.60 Qualification and licensing requirements for insurance sales personnel.

A savings association may not permit any person to sell or offer for sale any insurance product or annuity in any part of the savings association's office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

APPENDIX TO PART 536 — CONSUMER GRIEVANCE PROCESS.

Any consumer who believes that any savings association or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the savings association or on behalf of a savings association has violated the requirements of this part should contact the Director, Consumer Programs, Office of Thrift Supervision, at the following address: 1700 G Street, NW, Washington, DC 20552, or telephone 202-906-6237 or 800-842-6929, or e-mail consumer.complaints@ots.treas.gov.

DATED: August 4, 2000

By the Office of Thrift Supervision

Ellen Seidman

Director.

BILLING CODES: 4810-33-P; 6210-01-P; 6714-01-P; 6720-01-P