

RESCINDED

Office of Thrift Supervision
Department of the Treasury

April 23, 2001

Transmittal TR-241

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Federal Register, Vol. 65, No. 233, pp. 75822-75848

Number TR-241

In the attached joint final rule, the Office of Thrift Supervision (OTS) and the other federal banking agencies published final consumer protection rules for the sale of insurance products.

The final rule implements Section 305 of Gramm-Leach-Bliley, which directs the agencies to publish rules that apply to retail sales practices, solicitations, advertising, or offers of insurance products. The rule applies to any depository institution or any person that is engaged in such activities at an office of the institution or on behalf of the institution. The rule outlines specific provisions relating to sales practices, disclosures and advertising, the physical separation of banking and nonbanking activities, and domestic violence discrimination.

The National Association of Insurance Commissioners commented on the proposed rule and the agencies subsequently met with them during the preparation of both the proposed and final rules. The attached rule reflects those meetings.

The final rule was published in the December 4, 2000, edition of the Federal Register, Vol. 65, No. 233, pp. 75822-75848, and is effective April 1, 2001.

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Attachment

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****12 CFR Part 14**

[Docket No. 00–26]

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. 2000–97]

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: Final rule.

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 publishing final 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.

EFFECTIVE DATE: April 1, 2001.

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, DC 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; Sally Watts, Counsel (Banking and Finance), (202) 906–7380; 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 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 National Association of Insurance Commissioners (NAIC) has submitted a comment letter in connection with the proposed rules. In preparing the proposed rules and these final rules, the Agencies also have met and consulted with the NAIC.³ These final rules reflect these meetings with, and comments from, the NAIC.

The texts of the Agencies’ final rules are substantially identical. Any differences in style or terms are not intended to create substantive differences in the requirements imposed by the regulations.

Overview of Comments Received

On August 21, 2000, the Agencies published a joint notice of proposed rulemaking (the proposed rules) in the **Federal Register** (65 FR 50882). The Agencies received approximately 75 comments in response to the proposed rules.

The majority of comments were received from depository institutions. These commenters offered a large number of suggested changes, with the most commonly advanced suggestions including: modifying the “covered person” definition; excepting various types of insurance from coverage by the final rules; eliminating certain disclosure requirements; and limiting the physical separation requirements to the teller area of an institution.

The NAIC submitted a comment on behalf of the State insurance authorities that generally supported the Agencies’ proposed rules. The NAIC advised the Agencies to clarify in the final rules the role of the States in regulating insurance sales. The NAIC also requested more detailed guidance in the Consumer Grievance Appendix to the final rules. Finally, the NAIC expressed its view that the lending area of a depository institution should be separated from the area in which insurance is sold.

The Agencies have modified certain provisions of the proposed rules in light of the comments received. The most significant comments, and the Agencies’ responses, are discussed in the following section-by-section analysis. As was done in the preamble discussion of the proposed rules, the citations are to sections only, leaving blank the

¹ “Depository institution” means national banks in the case of institutions supervised by the Office of the Comptroller of the Currency (OCC), state member banks in the case of the Board of Governors of the Federal Reserve System (Board), state nonmember banks in the case of the Federal Deposit Insurance Corporation (FDIC), and savings associations in the case of the Office of Thrift Supervision (OTS).

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

³ A summary of the Agencies’ consultations with the NAIC is available in the rule-making file.

citations to the part numbers used by each agency.⁴

The Agencies also received several comments requesting the Agencies to delay the effective date of these rules. The commenters state that institutions will need time to modify existing disclosure forms, train personnel and implement system changes. In determining the effective date and administrative compliance requirements for new regulations, the Agencies are required to consider any administrative burden that the regulations would place on depository institutions and to delay the effective date until at least the first day of a calendar quarter that begins on or after the date on which the regulations are published.⁵ The Agencies recognize that "lead time" is necessary for some institutions covered by the final rules to adjust their systems to comply, although others have systems that already conform to some extent to the requirements of the rules. The Agencies therefore have made the effective date April 1, 2001.

Section-by-Section Analysis

The discussion that follows applies to each of the Agencies' final rules.

Section _____.10 Purpose and Scope

Proposed § _____.10 identified the purposes and scope of the rules. As stated in the proposal, the rules are intended to establish consumer protections in connection with retail sales of insurance products and annuities⁶ to consumers by any depository institution or by any person that is engaged in these activities at an office of the institution or on behalf of the institution. These rules address certain consumer protection concerns that arise from the conduct of insurance activities by a depository institution, at an office of the institution, or on behalf of the institution and are not intended to authorize new activities. These rules are not exclusive and, for example, applicable State laws administered by State insurance commissioners may apply, as provided by sections 104 and 305 of the G-L-B Act.

The Agencies received several comments on the proposed scope of these rules. Some of these commenters

noted that the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994) (Interagency Statement) also may apply in certain circumstances to sales of insurance or annuities by depository institutions. These commenters requested clarification on how the Agencies will apply the Interagency Statement to those products subject to both these rules and the Interagency Statement. The Agencies note that in the event of a conflict between the Interagency Statement and the final rules, the rules will prevail.

Certain of the definitions contained in the final rules also address the circumstances under which the rules will apply. Under the proposed rules, only subsidiaries that are selling insurance products or annuities at an office of the institution or acting "on behalf of" the depository institution as defined in the rules⁷ would be subject to the requirements of the rules. Section 47 gives the Agencies discretion to determine whether the Act's consumer protections should extend to a depository institution's subsidiary in other circumstances. The Agencies received only one comment supporting broader application of the final rules to depository institution subsidiaries. The Agencies believe that extending the rules to a depository institution's subsidiary in circumstances other than when the subsidiary is selling insurance products or annuities at an office of the institution or acting "on behalf of" the depository institution is unnecessary and, therefore, the final rules retain the approach taken in the proposed rules on this issue. 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."

Section _____.20 Definitions

The proposed rules contained several definitions about which the Agencies received little or no comment. The final rules therefore retain the definitions of "affiliate," "company," "control," "domestic violence," and "subsidiary" set forth in the proposed rules. The definitions about which the Agencies received more substantial comment are discussed below.

Consumer (§ _____.20(d)). The proposed rules defined "consumer" as an individual who obtains, applies for,

or is solicited to obtain insurance products or annuities from a covered person. The final rules make a clarifying change by replacing the term "obtains" with "purchases" in the definition of "consumer." A purchase includes any transaction where there is a cost to the consumer for the insurance either directly or indirectly such as a higher interest rate on a loan.

Several commenters asked the Agencies to distinguish between the terms "consumer" and "customer" in the same way as the Final Rules on the Privacy of Consumer Financial Information (Privacy Rules).⁸ However, unlike the Privacy Rules, section 47 uses the terms "consumer" and "customer" interchangeably without distinguishing between the two terms. For this reason, the Agencies believe that Congress did not intend to distinguish between consumers and customers for purposes of section 47. Thus, the Agencies have determined to continue to use the single term "consumer" in the final rules.

The Agencies also requested comment on whether the final rules should expand the definition of "consumer" to include small businesses. The majority of those commenting on this issue believed that the Agencies should not expand the definition to include small businesses because most Federal consumer protection statutes apply only to individuals. The Agencies agree with these commenters and therefore have not changed the definition of "consumer" to include small businesses.

The Agencies also invited 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." One effect of this change would be to exclude entities such as sole proprietorships and partnerships from the scope of the rules.

Several commenters preferred limiting the definition in this manner to be consistent with the Truth in Lending regulation's definition of "consumer credit."⁹ The Agencies agree with the commenters that depository institutions are familiar with this approach because it is used in other consumer protection rules. Thus, the final rules apply to an individual "who purchases or applies for insurance products or annuities primarily for personal, family, or household purposes."

⁴ The Board's rule is a new subpart of the Board's existing Regulation H, and not a separate regulation. Accordingly, the sections of the Board's rule are numbered consecutively.

⁵ 12 U.S.C. 4802.

⁶ These 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 appropriate agency and the courts.

⁷ OTS does not intend the requirements of this part to apply to other savings association operating subsidiaries or service corporations by operation of 12 CFR 559.3(h). The OCC does not intend the requirements of this part to apply to other national bank operating subsidiaries by operation of 12 CFR 5.34(e)(3).

⁸ 65 FR 35162 (June 1, 2000).

⁹ 12 CFR 226.2(a)(12) ("Consumer credit means credit offered or extended to a consumer primarily for personal, family, or household purposes.")

Covered person or you (§ _____.20(e)). The proposal used the term “covered person,” or “you,” to determine to whom the requirements in these rules 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” includes any person, including a subsidiary or other affiliate, if that person or one of its employees sells, solicits, advertises, or offers insurance products or annuities at an office of an institution or on behalf of an institution.

For purposes of this definition, the proposed rules provided that 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.

In the preamble to the proposed rules, the Agencies noted that the second prong of the “on behalf of” test—the receipt of commissions or fees—did 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 calculated as a share of the commissions or fees derived from the insurance product or annuity sale.

The Agencies sought 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 invited 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 received several comments on the proposed definition of covered person. Many commenters did not believe that the second prong of the “on behalf of” test should include a depository institution’s receipt of commissions or fees as a result of cross marketing. Those commenters suggested that the risk of customer confusion is small because a consumer typically would not know about the receipt of these fees. These commenters believed that requiring disclosures in these situations might actually result in increased customer confusion. The Agencies agree and therefore delete the reference to cross-marketing in the final rules. Thus, for example, while the sharing of customer lists with an unaffiliated third party would trigger certain requirements under the Privacy Rules, it would not trigger the requirements under any of the prongs in these final rules. The Agencies also note that the institution’s receipt of dividends from a subsidiary, or a holding company’s receipt of dividends from an affiliate, does not constitute receipt of “commissions or fees” within the meaning of this paragraph.

Several commenters also contended that the term “on behalf of” should not include sales of insurance products or annuities that result from a referral to an unaffiliated insurance agency by an employee of a depository institution. Unlike cross-marketing, a depository institution making a referral is in a position to influence a consumer’s choice of insurance providers. Therefore, the final rules retain the reference to “referrals” in the second prong of the “on behalf of” test, but with an important modification.

Rather than applying to any commission or fee derived from a sale resulting from a referral, the second prong of the “on behalf of” test in the final rules applies only when a depository institution has a contractual arrangement with an insurance provider to receive those fees. This is meant to distinguish referral fees and commissions received by a depository

institution under an arrangement based on sales with an insurance provider from those referral fees received by a teller, which are limited by § _____.50(b). Under § _____.50(b), any person who accepts deposits from the public in an area where such transactions are routinely conducted may receive a referral fee if it is 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.

A number of commenters also contended that the third prong of the “on behalf of” test should not cover situations where documents or other communications use the depository institution’s corporate logo or corporate name (a common logo or name used by the corporate family and not just by the depository institution). Those commenters believe that these circumstances alone are insufficient to create a level of confusion that warrants imposing the requirements under this rule. Moreover, extending the rules in this manner would cover transactions in which a depository institution has no involvement in the sale of insurance. The Agencies agree with these commenters, and therefore, the third prong of the “on behalf of” test in the final rules has been modified so that it does not cover documents that use a corporate logo or corporate name. It does, however, cover documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity that identify or refer to the depository institution. Under the final rules, insurance activities are conducted on behalf of a depository institution if the documents evidencing the activity identify or refer to the institution. In the Agencies’ view, the circumstances when the relevant documents refer to the institution for purposes of this test will depend on the facts involved.

The final rules also delete the fourth prong of the proposed “on behalf of” test because it is covered by the three remaining revised prongs. As revised, the Agencies believe that the remaining three prongs capture the appropriate circumstances under which a person could be said to be acting “on behalf of” a depository institution for purposes of these rules.

Several commenters also noted that the definition of “covered person” or “you” could be read to mean that once a person is a “covered person,” all insurance sales, solicitations, advertisements or offers by that person would be subject to these rules, whether or not these activities are conducted at an office of, or on behalf of, a depository

institution. The Agencies do not intend this result and have changed the proposal to clarify that a covered person is: (1) A depository institution; or (2) any other person only *when* the person sells, solicits, advertises or offers an insurance product or annuity to a consumer at an office of the institution or on behalf of the institution.

Finally, in the preamble to the proposed rules, the Agencies noted that the use of electronic media may present special issues in the application of the "on behalf of test" of the covered person definition. The Agencies invited comment on whether, and under what circumstances, to require disclosures for sales or solicitations by electronic media.

Several commenters suggested that the purposes of the statute and the rules—to avoid customer confusion about the nature of the products offered that arises because of the identity of the seller or marketer—is not implicated in all cases where a depository institution acts solely to bring together buyers and sellers of insurance products. For example, the Agencies believe that links established from depository institution web sites through the Internet or wireless services generally do not come within the scope of the covered person definition. To the extent there is a risk of possible consumer confusion when a customer leaves an institution's web site, the nature or type of these disclosures may differ and is better addressed in subsequent guidance or rulemaking.

Electronic media (§ _____.20(g)). 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. A discussion of changes made to these provisions in the final rules is set forth below. See proposed § _____.40.

In addition, the proposed rules recognized the need for flexibility to accommodate rapid changes in communications technologies and thus defined "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 Agencies invited comment on this proposed definition and on whether a more expansive definition would be

consistent with the G-L-B Act's requirement for both written and oral disclosures. The majority of commenters supported the proposed definition of "electronic media"¹⁰ because it provided sufficient flexibility to address future innovation. The final rule, therefore, retains the proposed definition of "electronic media."

Office (§ _____.20(h)). The proposed rules defined "office" as the premises of an institution where retail deposits are accepted from the public. The Agencies received several comments requesting that this definition be limited to deposit taking areas. The Agencies note that specific provisions in these rules relating to the physical separation of the insurance activities and permissibility of referral fees are limited to areas where deposits are routinely taken. However, the Agencies do not believe that the overall protections afforded by these rules should be limited in this manner and, therefore, retain in the final rules the definition of "office" set forth in the proposed rules.

The proposed rules did not define the term "insurance product." As explained in the preamble to the proposed rules, 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 G-L-B Act lists certain types of products that are first offered after January 1, 1999 that may constitute insurance for purposes of determining when a national bank may underwrite, rather than sell, insurance. Thus, the Agencies indicated that they will look to a variety of sources in determining whether a given product is covered by the proposed rules, including section 302(c), common usage, conventional definitions, judicial interpretations, and other Federal laws. The Agencies invited 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."

Few commenters requested a specific definition of insurance. Many commenters, however, asked that we exclude certain products from coverage or at least not require certain disclosures for those products. For example, those commenters believe that the rules should not cover credit insurance and property and casualty insurance because

¹⁰ Most of the comments concerning electronic media were raised in the context of disclosures and acknowledgments and are, therefore, discussed in the sections below concerning those requirements.

these products do not have an investment component and have been sold by and on behalf of depository institutions for years without consumer confusion. Section 47 of the G-L-B Act, however, does not distinguish between types of insurance products nor are the consumer protections under the statute limited to instances where there is a risk of investment loss or consumer confusion. The final rules therefore do not define the term "insurance" but, as explained in the discussion of § _____.40, provide more guidance on when certain disclosures are required.

Section _____.30 Prohibited Practices

Under section 47(b) of the FDIA, the Agencies' regulations must prohibit a covered person from engaging 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 1970,¹¹ 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 were set forth in proposed § _____.30(a).

Section 47(c)(2) of the FDIA also requires the Agencies' regulations to prohibit 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

¹¹ 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(g). Accordingly, OTS's final rule cites the HOLA provision.

insurance product or annuity from another source.

These prohibitions on misrepresentations were set forth in § _____.30(b) of the proposed rules.

The Agencies received several comments on these prohibitions. A few commenters asserted that the prohibitions on tying an extension of credit to the purchase of insurance should apply only to depository institutions and not all covered persons because section 106(b) of the Bank Holding Company Amendments of 1970 applies only to depository institutions. Therefore, the commenters requested the Agencies to amend proposed § _____.30(a) to delete references to parties other than depository institutions.

The commenter's proposed changes to § _____.30(a) are not supported by the statutory language, however. Section 47(c)(2) is not limited to depository institutions but also expressly applies to persons selling at an office of a depository institution or on behalf of the institution. In addition, § _____.30(a) is not a restatement of the section 106(b) prohibition on coercion by depository institutions. Rather, it is a prohibition on misleading a consumer into believing that an extension of credit could be conditioned in a manner that is prohibited by section 106(b). Section 47(c) of the G–L–B Act recognizes that either a depository institution, or someone selling at an office of a depository institution or on its behalf could mislead a consumer in this way. Therefore, the Agencies decline to limit § _____.30(a) to depository institutions.¹²

One commenter also questioned whether §§ _____.30 (a) and (b) would apply to “force placed” insurance. “Force placed” is a term used to describe a situation in which a depository institution purchases insurance, and bills the customer for it, because the customer has failed to obtain, or allowed to lapse, required insurance coverage for an asset used as collateral for a secured loan. The Agencies do not intend these final rules to apply to force placed insurance purchases since they are *made by depository institutions* to protect loan collateral rather than by consumers.

Finally, proposed § _____.30(c) implemented 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. One commenter stated that this provision could be difficult to comply with where a covered person sells or offers for sale insurance products for which a third party makes the decisions regarding the underwriting, pricing, renewal, scope of coverage, or payment of claims. However, the statute provides no exception from the prohibition on domestic violence discrimination in these circumstances. Therefore, the final rules as modified prohibit a covered person from selling or offering for sale, as principal, agent, or broker, any life or health insurance product if the status of the applicant or insured as a victim of domestic violence or as a provider of services to victims of domestic violence is considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of such product, or with regard to the payment of insurance claims on such product, except as required or expressly permitted under State law.

Section _____.40 What a Covered Person Must Disclose

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

Several commenters believed that the first disclosure—that the insurance product or annuity is not a deposit or

other obligation of, or guaranteed by, the depository institution—is unnecessary and not required by section 47. These commenters asserted that there is minimal risk that a customer will confuse an insurance product or annuity with a deposit. The Agencies disagree with this contention, particularly where the product has a savings component. Although the first disclosure is not expressly required by the statute, section 47 requires the Agencies to issue regulations that are consistent with the requirements of the G–L–B Act and provide “additional protections for customers” as necessary. The Agencies believe that requiring a covered person to disclose that the insurance product or annuity is not a deposit is necessary to protect consumers from confusion about the nature of the product offered.

There are, however, some instances where the first and second disclosures may not be accurate. Several commenters noted that the second disclosure—that a product is not insured by the depository institution or an agency of the United States—would not be true for Federal Crop Insurance and Federal Flood Insurance, both of which are insured by United States agencies. To address these concerns and to ensure that the disclosures required by § _____.40(a) are only made where accurate, the Agencies have modified § _____.40(a) to require a covered person to make the disclosures except to the extent the disclosures would not be accurate.

Several commenters also suggested removing certain types of insurance, such as property and casualty insurance and credit-related insurance, from the requirement to disclose that the product is not FDIC-insured. These commenters contend that there is little risk of confusion in these circumstances and that such disclosures may serve to increase customer confusion about the nature of the product offered. The Agencies disagree with this contention and favor requiring this disclosure in connection with the sale of any insurance product to prevent possible confusion about the nature of the product offered. The Agencies, however, will review this requirement on an on-going basis and make future changes if necessary.

Several commenters objected to the requirement that a covered person give the anti-coercion disclosures twice (once before the insurance sale and again if the consumer applies for credit). These commenters argued that section 47(a)(1)(A) provides that the Agencies' regulations only require the anti-coercion disclosure be made at the time of an application for credit. The

¹² The Agencies note that other provisions, such as the prohibitions on misrepresentations and certain required disclosures, also generally address situations relating to consumer coercion.

Agencies agree that this is a permissible interpretation of the statute and believe that the anti-coercion disclosure is most meaningful and relevant at the time a consumer is applying for credit. For this reason, the final rules only require that the anti-coercion disclosure be given at the time of application for credit. The Agencies have redesignated this provision as § _____.40(b) in the final rules.

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 (proposed § _____.40(a)(4)) also must 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. Section 47 of the FDIA authorizes the Agencies to make necessary adjustments to the G-L-B Act's requirements for sales conducted in person, by telephone, or by electronic media. Section 47(a)(1) also requires the Agencies to publish final rules in a form that the Agencies jointly determine to be appropriate. Proposed §§ _____.40(b)(2) set forth special timing and method of disclosure rules for electronic and telephone disclosures. Because the Agencies modified the anti-coercion disclosure and redesignated it as § _____.40(b), the timing and method of disclosure rules are contained in § _____.40(c).

The Agencies received several comments on the timing and method of disclosures. A few commenters contended that it would be difficult if not impossible to provide the required oral disclosures in connection with direct mail solicitations. The Agencies recognize that providing oral disclosures in circumstances like these—where there is no means of communicating orally at the time of the sales presentation—would be impracticable. Therefore, the final rule provides that if the sale of an insurance product or annuity is conducted by mail, a covered person that sells, solicits or offers an insurance product or annuity by mail is not required to make the oral disclosures required by § _____.40(a). The final rule further provides that if a covered person receives an application for credit by mail, the covered person is not required to make the oral disclosure required by § _____.40(b). The Agencies also intend

this exception from the oral disclosure requirements to apply to a situation such as a “take one” credit application, where the consumer picks up a blank application form, completes the application at home, and mails it back to the institution.

A similar situation arises with respect to offers, solicitations or sales by telephone. Under the proposed rules, a covered person who takes an application for credit by telephone may provide the written anti-coercion disclosure by mail, if the covered person mails it to the consumer within three days starting on the next business day, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a). Several commenters requested the Agencies extend this flexible approach to all of the written disclosures, not just the anti-coercion disclosure, when transactions are conducted by telephone. The Agencies agree with this concern and have changed the final rules relating to telephone transactions to extend the option of providing any written disclosures by mail within a three-day time period.

Under proposed § _____.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 proposed § _____.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. The proposal also required a covered person to comply with all other requirements imposed by law or regulation for providing disclosures electronically.

In the preamble to the proposed rules, the Agencies also noted 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)¹³ contains, among other things, Federal rules governing the use of electronic records for providing required information to consumers. An institution may satisfy a legal

¹³ Pub. L. 106-229, 114 Stat. 464 (June 30, 2000) (codified at 12 U.S.C. 7001 *et seq.*) The E-Sign Act generally took effect on October 1, 2000, although there are delayed effective dates for provisions other than those discussed in the text.

requirement that the institution provide *written* disclosures by using 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.¹⁴ 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.¹⁵ The Agencies invited comment on whether—and, if so, how—they should address the requirements of the E-Sign Act in the context of these proposed rules.

Two commenters suggested that providing disclosures consistent with the E-Sign Act should suffice. Commenters did not support other modifications of the final rule to address the E-Sign requirements. The Agencies believe electronic disclosures in lieu of written disclosures are appropriate if they meet the requirements of the E-Sign Act. Thus, the final rules provide that, subject to the requirements of section 101(c) of the E-Sign Act, a covered person may provide the written disclosures required by section _____.40(a) and (b) through electronic media if the consumer affirmatively consents to receiving disclosures electronically and if the disclosures are provided in a format that the consumer may retain or obtain later. This option is not limited to situations where the sale is conducted *entirely* through the use of electronic media, as in the proposed rule. Moreover, under the final rules, any disclosures required by _____.40(a) and (b) that are provided by electronic media are not required to be provided orally.

The Agencies made one additional clarifying change to the timing and method of the disclosure provisions to avoid an open-ended time frame for disclosures. The proposed rules required a covered person to make the anti-coercion disclosure “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.” Section _____.40(c)(1) requires that this

¹⁴ See 12 U.S.C. 7001(c)(1).

¹⁵ 12 U.S.C. 7004(d)(1).

disclosure be made "at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity is solicited, offered, or sold." In addition, if a solicitation, offer, or sale occurs in connection with an application for credit that is pending with the depository institution, a covered person must make the disclosure when the solicitation, offer, or sale occurs.

The Agencies note that, consistent with section 47(c), the final rules require a covered person to provide the disclosures in connection with the "initial purchase" of an insurance product or annuity. Accordingly, while new disclosures are not required when a consumer simply renews an insurance policy or annuity, disclosures are required if a consumer purchases a different insurance product or annuity.

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)(3) contained this requirement and further required that the disclosures also must be designed to call attention to the nature and significance of the information provided. For example, the proposed rules provided that 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.

Several commenters requested that the Agencies clarify the circumstances in which a covered person may use the short form disclosures. The Agencies believe that provisions in the Joint Interpretations of the Interagency Statement on Retail Sales of Nondeposit Investment Products (September 12, 1995) for use of short form disclosures provide useful guidance on this issue. Therefore, the final rules are changed to provide that short form disclosures may be used in visual media, such as television broadcasts, ATM screens, billboards, signs, posters, and in written advertisements and promotional materials, such as brochures. The Agencies note that it may be appropriate to use the short form disclosures in other circumstances. The Agencies will

monitor use of these disclosures and issue further guidance if necessary.

In addition, several commenters requested that the final rules provide a short form of the anti-coercion disclosures. However, the commenters' suggested short form anti-coercion disclosure did not adequately capture all of the information contained in the form set forth in § _____.40(b) of the final rules. Moreover, the Agencies believe that requiring the full anti-coercion disclosure is not particularly burdensome because the final rules require the disclosure to be made only in circumstances involving a consumer's application for credit in connection with which insurance is solicited, offered, or sold. Therefore, the final rules do not provide a short form of the anti-coercion disclosure.

The Agencies also invited comment on whether the final rule should provide specific methods of calling attention to the material contained in the disclosures. For example, the Agencies suggested that 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 type size that are easy to read;
- Wide margins and ample line spacing;
- Boldface or italics for key words; and
- Distinctive type size, style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

Some commenters expressed concern that including these examples in the regulation would be viewed as adding new requirements. These concerns, however, are unfounded. The Agencies believe that providing examples of possible methods of calling attention to the material contained in the disclosures will provide useful guidance to the industry. The Agencies therefore have included these methods in the final rules as *examples* of ways in which a covered person could call a consumer's attention to the nature and significance of the information provided in the required disclosures. These examples are not binding requirements.

Further, as provided in § _____.40(c)(6) of the final rules, a disclosure 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 invited comment on whether these standards would adequately address situations where disclosures are made through electronic media. For example, the Federal Trade Commission (FTC) recently released detailed 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.¹⁶ The Agencies sought comment on whether the type of detail provided in the FTC guidance is necessary in these proposed rules.

The Agencies received several comments on this issue, none of which favored providing the type of detail provided in the FTC guidance. Accordingly, the final rule does not include this level of detail.

Consumer Acknowledgment

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

Several commenters noted that it would be difficult to comply with the consumer acknowledgment requirement in situations other than face-to-face transactions. In mail or telephone transactions, for example, a covered person cannot control whether a consumer completes and returns a written acknowledgment. These commenters requested that the Agencies modify the proposed consumer acknowledgment provision to waive the written acknowledgment requirement in transactions that are not face-to-face. The Agencies appreciate the difficulties with obtaining consumer acknowledgments in non-face-to-face transactions but note that section 47 of the G-L-B Act contains no waiver for consumer acknowledgments in those situations. To address this problem, the Agencies have modified the consumer

¹⁶ The FTC's guidance, Dot Com Disclosures: Information about Online Advertising is available at www.ftc.gov/bcp/conline/pubs/buspubs/dotcom/index.html.

acknowledgment provision to provide that, if the disclosures required under § _____.40(a) or (b) are provided in connection with a transaction that is conducted by telephone, a covered person must: (1) Obtain an oral acknowledgment of receipt of the disclosures and maintain sufficient documentation to show that the acknowledgment was given; and (2) make reasonable efforts to obtain a written acknowledgment from the consumer. The final rules also clarify that a covered person may in all circumstances permit a consumer to acknowledge receipt of the disclosure electronically or in paper form. The Agencies intend that the implementation of this consumer acknowledgment requirement will not affect the substantive requirements of the parties pursuant to contracts for the sale of insurance products and annuities under applicable State law.

Advertisements and Other Promotional Material for Insurance Products or Annuities

In accordance with section 47(c)(1)(C) of the FDIA, proposed § _____.40(c) clarified that the disclosures described in proposed § _____.40 are not required in advertisements of a general nature describing or listing the services or products offered by the depository institution. The final rules modify this section slightly, and redesignate it as § _____.40(d), to clarify that the exclusion of the disclosure requirements does not apply to all advertisements and promotional material for insurance products or annuities but only to such material that is of a general nature, describing or listing the services or products offered by the depository institution. Further, § _____.40(d) refers only to the disclosures described in § _____.40(a). The Agencies believe that because the anti-coercion disclosure set forth in § _____.40(b) is required to be made only in the context of an application for credit, it could be confusing to the consumer if the disclosures were required in all advertisements and promotional material for insurance products or annuities.

Section _____.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) set forth this general rule. It further required 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.

The Agencies received several comments on this provision, most of which asked for clearer guidance on what constitutes the area where deposits are routinely accepted. Several asserted that the physical segregation requirement should not apply to an institution's "platform" areas and should only apply to teller windows. "Platform" areas are typically areas of an institution's premises in which employees other than tellers engage in a variety of activities, including the origination of loans, the sale of insurance and annuity products, and occasionally, the acceptance of deposits. The Agencies wish to clarify for purposes of these final rules that the areas where retail deposits are routinely accepted from the general public are generally limited to traditional teller windows and teller lines.

One commenter also recommended physically segregating the area where lending activities occur from the area where insurance products or annuities sales occur. The Agencies decline to make this change because it would extend significantly beyond the restrictions set forth in the statute.

Proposed § _____.50(b) implemented section 47(d)(2)(B) of the FDIA, concerning referrals to insurance product and annuity sales personnel by a person who accepts deposits from the public. Under that proposed section, 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. The Agencies received several comments requesting that the limits on referral fees apply only to tellers. The Agencies believe that the person described in the regulation text—that is, a person "who accepts deposits from the public in an area where such transactions are routinely conducted" will typically be a teller. The Agencies also believe that a description by function is preferable because it is more precise. We have therefore retained the language as proposed.

Section _____.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, proposed section _____.60 provided that 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. One commenter expressed the opinion that this provision is unnecessary because each state's insurance licensing agency is already policing its licensing and qualification requirements. The Agencies retain this provision because it is required by the statute.

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 rules. Each agency has procedures in place to handle consumer complaints they receive directly.¹⁷ The Agencies will apply those procedures to complaints involving these rules. The Appendix to each agency's final 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 rules may 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. It is expected that these agreements will facilitate prompt resolution of consumer complaints and ensure that incoming complaints are directed to the appropriate agency. Consumer complaints alleging violations of these rules that raise issues under State and

¹⁷ E.g., OTS Customer Service Plan at www.ots.treas.gov/consass/html.

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 final 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 final rules is greater than the protection provided by comparable state law or rulings, these final 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 final 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 final rules will be applicable unless the State adopts legislation within three years to override the preemption notice.

In the preamble to the proposed rules, the Board, FDIC and OCC invited 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. The comments generally did not support the inclusion in the final rules of a preemption appendix. The Agencies do not believe it would be useful to include such an appendix.

Regulatory Analysis

A. Paperwork Reduction Act

The Agencies may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers and clearance expiration dates are listed below:

OCC: 1557-0220; October 31, 2003.

Board: 7100-0295; November 30, 2003.

FDIC: 3064-0140; October 31, 2003.

OTS: 1550-0106; October 31, 2003.

The final rule 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) (§§ ____ .40(a) and (b)).

The Agencies received one comment that addressed a perceived low burden estimate stemming from these disclosures. The commenter, however, provided no suggestion as to an appropriate higher estimate. Other comments regarding the information collection are discussed above in the preamble discussion of §§ ____ .20, ____ .40 (a) and (b).

OCC: The 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. OMB has reviewed and approved the collections of information contained in the rule under control number 1557-0220, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). There are 1,949 respondents with a total annual burden of 19,490 hours.

Board: The 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. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board approved the rule under the authority delegated to the Board by OMB. The OMB control number is 7100-0295. There are 1,010 respondents with a total annual burden of 46,090 hours.

FDIC: The 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. OMB has reviewed and approved the collections of information contained in the rule under control number 3064-0140, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). There are 5,800 respondents with a total annual burden of 76,667 hours.

OTS: The 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. OMB

has reviewed and approved the collections of information contained in the rule under control number 1550-0106, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). There are 1,097 respondents with a total annual burden of 47,286 hours.

The Agencies have a continuing interest in the public's opinion regarding collections of information. Members of the public may submit comments, at any time, regarding any aspect of these collections of information. Comments may be sent to:

OCC: Jessie Dunaway, Clearance Officer, Office of the Comptroller of the Currency, 250 E Street, SW, Mailstop 8-4, Washington, DC 20219.

Board: Mary M. West, Federal Reserve Board Clearance Officer, Mailstop 97, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FDIC: Steven F. Hanft, Assistant Executive Secretary (Regulatory Analysis), Federal Deposit Insurance Corporation, Room F-4080, 550 17th Street, NW, Washington, DC 20429.

OTS: Dissemination Branch (1550-0106), Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

B. Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires federal agencies either to provide a Final Regulatory Flexibility Analysis (FRFA) with a final rule or certify that the final rule "will not, if promulgated," have a significant economic impact on a substantial number of small entities. On the basis of the information currently available, the OCC is of the opinion that this final rule is unlikely to have a significant impact on a substantial number of small entities. Because the final rules implement new legislation, however, the OCC lacks historical information specific to the requirements in the final rules on which to base estimates of cost. For this reason, the OCC has prepared the following FRFA.

Reasons, Objectives, and Legal Basis for the Final Rule

The OCC is issuing this final rule to implement section 47 of the FDIA. A fuller discussion of the reasons for, objectives of, and legal basis for, the final rule appears elsewhere in the Supplementary Information.

Description of the Small Entities to Which the Final Rule Would Apply

The final rule would apply to a national bank or any "other person" who, at an office of a national bank or on behalf of a national bank, sells,

solicits, advertises, or offers insurance products or annuities to consumers. The final rule would apply regardless of the size of the bank or other organization for which a person worked.

Small national banks are generally defined, for Regulatory Flexibility Act purposes, as those with assets of \$100 million or less. 13 CFR 121.201, Division H (2000). 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 final rule. We estimated in the preamble to the proposed rule that 976 of the national banks that sold insurance as of January, 1999, had \$100 million or less in assets. We received no comment on this estimate and believe it to be accurate.

Reporting, Recordkeeping, and Compliance Requirements of the Final Rule

The final rule 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 final rule 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.¹⁸

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. This final rule will not become effective until April 1, 2001, which should allow ample time for most banks to exhaust their inventory of printed materials and prepare new materials. 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 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.

Summary of Significant Issues Raised by the Public Comments in Response to Initial Regulatory Flexibility Analysis and Description of Steps the Agency Has Taken To Minimize Burden

The issues raised by the commenters are described more fully elsewhere in the Supplementary Information. The issues that were raised by commenters about the proposal's impact on small businesses were the following:

- The requirement that a covered person obtain a written acknowledgment of receipt of disclosures for a telephone transaction could require significant effort and additional correspondence if the customer does not return the acknowledgment with other paperwork for the policy. This effort would be a significant burden for small financial institutions.
- The requirement that such insurance as credit and mortgage insurance be sold in an area of the office separate from where deposits are routinely taken poses a particular hardship for small financial institutions where deposits and loan applications are taken at the same place.

The OCC considered how to tailor the form of disclosures and acknowledgments to the form of the sales transaction and how to make the record of acknowledgment functional, within the statutory constraints. In the case of telephone applications for credit, the proposed rule permitted the anti-coercion disclosure due at the time of applications to be given orally and

followed with written disclosures mailed within three days. To extend the principle more broadly, the final rule applies this form of providing written disclosures for telephone sales to all the required disclosures. The timing has been clarified to be three business days, starting with the first business day after the telephone transaction. With respect to telephone sales, the final rule permits an oral acknowledgment of the disclosures if the covered person documents the acknowledgment. In that case, the final rule requires the covered person also to make reasonable efforts to obtain a written acknowledgment.

We have made an additional change affecting disclosures relevant to sales initiated by telephone. The proposed rule limited the use of electronic disclosures to those transactions taking *place entirely* electronically. Commenters were concerned that the proposed rule did not permit electronic disclosures to be used in transactions that may have started with a telephone contact. To address this concern, the final rule provides that, if a transaction involves telephone contact, but the consumer affirmatively consents to transmission of disclosures through electronic media instead of on paper, the covered person may provide the "written" disclosures electronically. Of course, these electronic disclosures must satisfy the rule's requirement that the format of disclosure be one that permits the consumer to retain or to obtain later, such as by printing or storing electronically. Where disclosures are made electronically, the rule already provided that the consumer could acknowledge them electronically. Electronic acknowledgment of electronic disclosures applies under the final rule to these mixed media transactions, as well. The final rule also provides that oral disclosures are not required where disclosures are provided electronically. This exception applies not only to disclosures provided in the sale of insurance and annuities as in the proposed rule, but also to the anti-coercion disclosure provided with credit applications.

In response to the concern expressed about the difficulty of separating functions in a small office, we have clarified in the preamble to this final rule that generally the location where deposits are routinely taken is the teller window and teller line. This distinction permits a savings association to sell insurance products and annuities from the "platform area," where loan transactions may routinely be conducted, if the savings association distinguishes that area from the teller window area. The regulation also

¹⁸ The final 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.

requires this segregation of functions into separate areas "to the extent practicable." If it is not practicable for a small institution to have separate areas, it could make other efforts to satisfy the separation of functions between deposit taking and selling of insurance.

We note that in addition to these specific responses to concerns expressed with reference to impact on small entities, we have limited the scope of the rule in other ways to minimize compliance burdens. The final rule:

- Only applies to retail sales, solicitations, advertisements, or offers of insurance products or annuities to *individuals* purchasing for personal, family, or household use. The Agencies have determined, after requesting comment on whether to also include small business insurance purchases, not to broaden the coverage.

- Does not apply to subsidiaries of depository institutions, except where the 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.

- Clarifies the scope of the rule and the definition of "you" to apply only to transactions conducted by the person that are by, at an office of, or on behalf of, the savings association.

- Defines "office" narrowly to include only premises where retail deposits are accepted from the public.

- Clarifies when certain disclosures must be provided, including that a disclosure such as "not insured by any federal agency" is not to be given where it would be inaccurate (as in the case of federally-insured crop insurance or flood insurance).

- Only requires the anti-coercion disclosure to be made once, instead of twice per transaction.

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

- Provides that, in the case of telephone sales, the duty to obtain a consumer's acknowledgment of receiving the disclosures may be satisfied by an oral acknowledgment of disclosures combined with reasonable efforts to obtain a written acknowledgment.

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

- Provides for a delayed effective date, requiring compliance by April 1,

2001, to permit adequate time to prepare disclosures and acknowledgment materials and train staff.

Significant Alternatives to the Final Rule

Section 305 of the G-L-B Act expressly prescribes the content of its implementing regulations. The OCC's final rule 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 final rule, the OCC has considered the burden on small national banks to the extent that it has the discretion to do so. As set forth above in the discussion of significant issues raised in response to the Initial Regulatory Flexibility Analysis, the Agencies have modified the final rules to minimize burden.

Duplicative, Overlapping, or Conflicting Federal Rules

As used in the 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 final rules do not appear to conflict materially with the Interagency Statement.

Board: The Regulatory Flexibility Act (5 U.S.C. 601-12) requires federal agencies either to provide a Final Regulatory Flexibility Analysis with a final rule or to certify that the final rule will not have a significant economic impact on a substantial number of small entities. Based on available data, the Board is unable to determine at this time whether the final rule would have a significant impact on a substantial number of small entities. For this reason, the Board has prepared the

following Final Regulatory Flexibility Analysis.

Reasons, Objectives, and Legal Basis for the Final Rule

A description of the reasons why the Board is adopting this final rule and a statement of the need for, and the objectives of, the final rule are contained in the supplementary materials provided above. The Board's final rule is virtually identical to the final rules being adopted by the other Federal banking agencies for the depository institutions over which they have primary supervisory authority.

Description of the Small Entities to Which the Final Rule Would Apply

The final rule applies to all state member banks and any other person when that person sells, solicits, advertises, or offers an insurance product or annuity to an individual for personal, family, or household purposes 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 the bank, or how many of these other persons are small entities.

Summary of Significant Issues Raised by the Public Comments in Response to Initial Regulatory Flexibility Analysis and Description of Steps the Agency has Taken to Minimize Burden

The issues raised by the commenters generally are described more fully in the supplementary material provided above. The issues that were raised by commenters in connection with impact on small businesses, specifically, were the following:

- The requirement that a covered person obtain a written acknowledgment of receipt of disclosures for a telephone transaction could require significant effort and additional correspondence if the customer does not return the acknowledgment with other paperwork for the policy. This effort would be a significant burden for small financial institutions.

- The requirement that such insurance as credit and mortgage insurance be sold in an area of the office separate from where deposits are routinely taken poses a particular hardship for small financial institutions

where deposits and loan applications are taken at the same place.

The Board considered how to tailor the form of disclosures and acknowledgments to the form of the sales transaction and how to make the record of acknowledgment functional, within the statutory constraints. In the case of telephone applications for credit, the proposed rule permitted the anti-coercion disclosure due at the time of applications to be given orally and followed with written disclosures mailed within three days. To extend the principle more broadly, the final rule applies this form of providing written disclosures for telephone sales to all the required disclosures. The timing has been clarified to be three business days, starting with the first business day after the telephone transaction. With respect to telephone sales, the final rule permits an oral acknowledgment of the disclosures if the acknowledgment is documented. In that case, the final rule requires also that reasonable efforts be made to obtain a written acknowledgment.

We have made an additional change affecting disclosures relevant to sales initiated by telephone. The proposed rule limited the use of electronic disclosures to those transactions taking place *entirely* electronically. Commenters were concerned that the proposed rule did not permit electronic disclosures to be used in transactions that may have started with a telephone contact. To address this concern, the final rule provides that, if a transaction involves telephone contact, but the consumer affirmatively consents to transmission of disclosures through electronic media instead of on paper, the covered person may provide the "written" disclosures electronically. Of course, these electronic disclosures must satisfy the rule's requirement that the format of disclosure be one that permits the consumer to retain or to obtain later, such as by printing or storing electronically. Where disclosures are made electronically, the rule already provided that the consumer could acknowledge them electronically. Electronic acknowledgment of electronic disclosures applies under the final rule to these mixed media transactions, as well.

In response to the concern expressed about the difficulty of separating functions in a small office, we have clarified in the preamble to this final rule that generally the location where deposits are routinely taken is the teller window and teller line. This distinction permits a state member bank to sell insurance products and annuities from the "platform area," where loan

transactions may routinely be conducted, if the state member bank distinguishes that area from the teller window area. The regulation also requires this segregation of functions into separate areas "to the extent practicable." If it is not practicable for a small institution to have separate areas, it could make other efforts to satisfy the separation of functions between deposit taking and selling of insurance.

We note that in addition to these specific responses to concerns expressed with reference to impact on small entities, we have limited the scope of the rule in other ways to minimize compliance burdens. The final rule:

- Only applies to retail sales, solicitations, advertisements, or offers of insurance products or annuities to *individuals* purchasing for personal, family, or household use. The Agencies have determined, after requesting comment on whether to also include small business insurance purchases, not to broaden the coverage.

- Does not apply to subsidiaries of depository institutions, except where the subsidiaries are selling, soliciting, advertising, or offering insurance products or annuities to consumers at an office of a state member bank or on behalf of a state member bank.

- Clarifies the scope of the rule and the definition of "you" to apply only to transactions conducted by the person that are by, at an office of, or on behalf of, the state member bank.

- Defines "office" narrowly to include only premises where retail deposits are accepted from the public.

- Clarifies when certain disclosures must be provided, including that a disclosure such as "not insured by any federal agency" is not to be given where it would be inaccurate (as in the case of federally-insured crop insurance or flood insurance).

- Only requires the anti-coercion disclosure to be made once, instead of twice per transaction.

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

- Provides that, in the case of telephone sales, the duty to obtain a consumer's acknowledgment of receiving the disclosures may be satisfied by an oral acknowledgment of disclosures combined with reasonable efforts to obtain a written acknowledgment.

- Does not require disclosures in advertisements of a general nature describing or listing the services or

products offered by the state member bank.

- Provides for a delayed effective date, requiring compliance by April 1, 2001, to permit adequate time to prepare disclosures and acknowledgment materials and train staff.

Reporting, Recordingkeeping, and Compliance Requirements of the Final Rule

The final rule requires a depository institution to make required disclosures in connection with insurance activities and applications for credit if insurance is sold or solicited in connection with the credit. Some insurance products or annuities that are covered by the final regulation may also be subject to the 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 final rule. The Board does not believe that the final rule would conflict materially with the Interagency Statement.

The final rule also prohibits certain practices in the sale of insurance, such as the tying of credit and insurance, making misrepresentations, and discriminating against the victims of domestic violence. These prohibitions incorporate the existing statutory prohibition on tying arrangements in section 106(b) of the Bank Holding Company Amendments of 1970 (12 U.S.C. 1972). Existing laws also ban many types of discrimination. To some extent, therefore, state member banks may already have the professional skills needed to comply with the requirements of the final rule.

Significant Alternatives to the Final Rule

As explained above, the substantive provisions of the final rule are required by section 47 of the FDIA. The final rule does not impose any new substantive requirements that are not mandated by the statute. Section 47 applies to all depository institutions, regardless of size, and does not provide the Agencies with the authority to exempt a small institution from the requirements of the statute. Thus, the Board has only limited discretion to consider alternatives to minimize the economic impact on small entities. As explained above, the Agencies have made some modifications to the proposed rule to accommodate existing methods of soliciting and selling insurance products and annuities and to reduce regulatory burden.

FDIC: The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-612, requires

federal agencies either to provide a Final Regulatory Flexibility Analysis (FRFA) with a final rule or certify that the final rule "will not, if promulgated," have a significant economic impact on a substantial number of small entities. On the basis of the information currently available, the FDIC believes that this final rule is unlikely to have a significant impact on a substantial number of small entities. Because the final rules implement new legislation, however, the FDIC lacks historical information specific to the requirements in the final rules on which to base estimates of cost. For this reason, the FDIC has prepared the following FRFA.

Reasons, Objectives, and Legal Basis for the Final Rule.

The FDIC is issuing this final rule to implement section 47 of the FDIA. A fuller discussion of the reasons for, objectives of, and legal basis for, the final rule appears elsewhere in the Supplementary Information.

Description of the Small Entities to Which the Final Rule Would Apply

The FDIC's final rule applies to all FDIC-insured, state-chartered banks that are not members of the Federal Reserve System (approximately 5800) and any "other person" who, at an office of the bank or on behalf of the bank, sells, solicits, advertises, or offers insurance products or annuities to consumers. The final rule applies regardless of the size of the bank or other organization for which a person worked. The FDIC estimated in the preamble to the proposed rule that approximately 3700 of this total are "small entities" as defined by the RFA.¹⁹ We received no comment on this estimate and believe it to be accurate.

Reporting, Recordkeeping, and Compliance Requirements of the Final Rule

The final rule requires banks (and entities acting on behalf of 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 and annuities to consumers. The final rule also requires 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.²⁰

The FDIC believes that most 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. This final rule will not become effective until April 1, 2001, which should allow ample time for most banks to use up their inventory of printed materials and prepare new materials. 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 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.

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 FDIC'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.

Summary of Significant Issues Raised by the Public Comments in Response to Initial Regulatory Flexibility Analysis and Description of Steps the Agency Has Taken To Minimize Burden

The issues raised by the commenters generally are described more fully in the supplementary material provided above. The issues that were raised by commenters in connection with impact on small businesses, specifically, were the following:

- The requirement that a covered person obtain a written acknowledgment of receipt of disclosures for a telephone transaction

could require significant effort and additional correspondence if the customer does not return the acknowledgment with other paperwork for the policy. This effort would be a significant burden for small financial institutions.

- The requirement that such insurance as credit and mortgage insurance be sold in an area of the office separate from where deposits are routinely taken poses a particular hardship for small financial institutions where deposits and loan applications are taken at the same place.

The FDIC seriously considered how to tailor the form of disclosures and acknowledgments to the form of the sales transaction and how to make the record of acknowledgment functional, within the statutory constraints. In the case of telephone applications for credit, the proposed rule permitted the anti-coercion disclosure due at the time of applications to be given orally and followed with written disclosures mailed within three days. To extend the principle more broadly, the final rule applies this form of providing written disclosures for telephone sales to all the required disclosures. The timing has been clarified to be three business days, starting with the first business day after the telephone transaction. With respect to telephone sales, the final rule permits an oral acknowledgment of the disclosures if the covered person documents the acknowledgment. In that case, the final rule requires the covered person also to make reasonable efforts to obtain a written acknowledgment.

We have made an additional change affecting disclosures relevant to sales initiated by telephone. The proposed rule limited the use of electronic disclosures to those transactions taking place *entirely* electronically. Commenters were concerned that the proposed rule did not permit electronic disclosures to be used in transactions that may have started with a telephone contact. To address this concern, the final rule provides that, if a transaction involves telephone contact, but the consumer affirmatively consents to transmission of disclosures through electronic media instead of on paper, the covered person may provide the "written" disclosures electronically. Of course, these electronic disclosures must satisfy the rule's requirement that the format of disclosure be one that permits the consumer to retain or to obtain later, such as by printing or storing electronically. Where disclosures are made electronically, the rule already provided that the consumer could acknowledge them electronically. Electronic acknowledgment of

¹⁹The 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 of banking purposes as a national or commercial, savings institution or credit union with less than \$100 million in assets." See 13 CFR 121.201.

²⁰The final rule also requires 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 bank to determine what costs, if any, the bank must incur in order to avoid customer confusion.

electronic disclosures applies under the final rule to these mixed media transactions, as well. The final rule also provides that oral disclosures are not required where disclosures are provided electronically. This exception applies not only to disclosures provided in the sale of insurance and annuities as in the proposed rule, but also to the anti-coercion disclosure provided with credit applications.

In response to the concern expressed about the difficulty of separating functions in a small office, we have clarified in the preamble to this final rule that generally the location where deposits are routinely taken is the teller window and teller line. This distinction permits a depository institution to sell insurance products and annuities from the "platform area," where loan transactions may routinely be conducted, if the savings association distinguishes that area from the teller window area. The regulation also requires this segregation of functions into separate areas "to the extent practicable." If it is not practicable for a small institution to have separate areas, it could make other efforts to satisfy the separation of functions between deposit taking and selling of insurance.

We note that in addition to these specific responses to concerns expressed with reference to impact on small entities, we have limited the scope of the rule in other ways to minimize compliance burdens. The final rule:

- Only applies to retail sales, solicitations, advertisements, or offers of insurance products or annuities to *individuals* purchasing for personal, family, or household use. The Agencies have determined, after requesting comment on whether to also include small business purchase, not to broaden the coverage.
- Does not apply to subsidiaries of depository institutions, except where the 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 adopting 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.
- Clarifies the scope of the rule and the definition of "you" to apply only to transactions conducted by the person that are by, at an office of, or on behalf of, the bank.

- Defines "office" narrowly to include only premises where retail deposits are accepted from the public.
- Clarifies when certain disclosures must be provided, including that a disclosure such as "not insured by any federal agency" is not to be given where it would be inaccurate (as in the case of federally-insured crop insurance or flood insurance).
- Only requires the anti-coercion disclosure to be made once, instead of twice per transaction.
- Provides flexibility for covered persons to use a variety of means to provide disclosures that are readily understandable and call attention to the information.
- Provides that, in the case of telephone sales, the duty to obtain a consumer's acknowledgment of receiving the disclosures may be satisfied by an oral acknowledgment of disclosures combined with reasonable efforts to obtain a written acknowledgment.
- Does not require disclosures in advertisements of a general nature describing or listing the services or products offered by the bank.
- Provides for a delayed effective date, requiring compliance by April 1, 2001, to permit adequate time to prepare disclosures and acknowledgment materials and train staff.

Significant Alternatives to the Final Rule

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

In preparing the final rule, the FDIC has considered the burden on small banks to the extent that it has the discretion to do so. As set forth above in the discussion of significant issues raised in response to the Initial Regulatory Flexibility Analysis, the Agencies have modified the final rules to minimize burden.

Duplicative, Overlapping, or Conflicting Federal Rules

As used in the 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 final rules do not appear to conflict materially with the Interagency Statement.

OTS: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires federal agencies to prepare a final regulatory flexibility analysis (RFA) with a final rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. OTS believes that this rule will not have a significant economic impact on a substantial number of small thrifts or other small entities because the burden imposed on small entities stems in large part from the G-L-B Act rather than from the final rule. This final rule restates and clarifies the statutory requirements. These clarifications should reduce the burden of complying with the G-L-B Act provisions. OTS has revised the proposed rule to reduce the regulatory burden on financial institutions of all sizes, as discussed below. However, OTS has prepared the following final RFA, because the G-L-B Act creates requirements that, in part, are new to the OTS, the thrift industry, and others, and because OTS is uncertain of the economic impact of compliance with the new requirements.

1. Statement of Need and Objectives

A description of the reasons why OTS is adopting this final rule and a statement of the objectives of, and legal basis for, the final rule, are contained in the supplementary materials provided above.

2. Small Entities to Which the Final Rule Would Apply

The final rule would apply to a savings association or any "other person" who, at an office of a savings association or on behalf of a savings association, sells, solicits, advertises, or offers insurance products or annuities to consumers. The final rule would apply regardless of the size of the savings association or other organization for which a person worked.

Small savings associations are generally defined, for Regulatory

Flexibility Act purposes, as those with assets of \$100 million or less. 13 CFR 121.201, Division H (2000). As of the publication of the proposed rule, OTS calculated that of the approximately 1,097 savings associations, a maximum of 482 were small savings associations. Currently, OTS calculates that of the approximately 1,091 savings associations, a maximum of 476 are small savings associations. OTS estimates that all of the small savings associations sell, solicit, advertise, or offer insurance products or annuities to consumers.

OTS does not collect data on how many "covered persons" that are not savings associations 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, or on how many of them are small entities. The initial RFA published in the proposed rule sought information about impact on entities other than savings associations affected by the rule to permit OTS to better analyze the effect. Although OTS received comments on the proposed rule from insurance industry representatives, who might have data with respect to their members, none of them provided information on the number or size of entities other than savings associations affected by the rule. As a result, OTS is unable to determine the number or size of entities other than savings associations affected by this final rule.

3. Significant Issues Raised in Response to Initial Regulatory Flexibility Analysis and Changes Made To Minimize Burden

The issues raised by the commenters generally are described more fully in the supplementary material provided above. The issues that were raised by commenters in connection with impact on small businesses, specifically, were the following:

- The requirement that a covered person obtain a written acknowledgment of receipt of disclosures for a telephone transaction could require significant effort and additional correspondence if the customer does not return the acknowledgment with other paperwork for the policy. This effort would be a significant burden for small financial institutions.

- The requirement that such insurance as credit and mortgage insurance be sold in an area of the office separate from where deposits are routinely taken poses a particular hardship for small financial institutions where deposits and loan applications are taken at the same place.

OTS seriously considered how to tailor the form of disclosures and acknowledgments to the form of the sales transaction and how to make the record of acknowledgment functional, within the statutory constraints. In the case of telephone applications for credit, the proposed rule permitted the disclosure on anti-tying due at the time of applications to be given orally and followed with written disclosures by mail, provided that the written disclosures were mailed within three days. To extend the principle more broadly, the final rule applies this form of providing written disclosures for telephone sales to all the required disclosures. The timing has been clarified to be three business days, starting with the first business day after the telephone transaction. With respect to telephone sales, the final rule permits an oral acknowledgment of the disclosures if the covered person documents the acknowledgment. In that case, the final rule requires the covered person to make reasonable efforts to obtain a written acknowledgment, as well.

We have made an additional change affecting disclosures relevant to sales initiated by telephone. In response to concerns expressed about the proposed rule's limitation of using electronic disclosures to those transactions taking place *entirely* electronically, and not permitting them to be used in transactions that may have started with a telephone contact, we have removed that limitation. Thus, if a transaction involves telephone contact, but the consumer affirmatively consents to transmission of disclosures through electronic media instead of on paper, the covered person may provide the "written" disclosures electronically. Of course, these electronic disclosures must satisfy the rule's requirement that the format of disclosure be one that permits the consumer to retain or to obtain later, such as by printing or storing electronically. Where disclosures are made electronically, the rule already provided that the consumer could acknowledge them electronically. Electronic acknowledgment of electronic disclosures applies under the final rule to these mixed media transactions, as well. The final rule also provides that oral disclosures are not required where disclosures are provided electronically. This exception applies not only to disclosures provided in the sale of insurance and annuities as in the proposed rule, but also to the anti-coercion disclosure provided with credit applications.

In response to the concern expressed about the difficulty of separating

functions in a small office, we have clarified in the preamble to this final rule that generally the location where deposits are routinely taken is the teller window and teller line. This distinction permits a savings association to sell insurance products and annuities from the "platform area" where loan transactions may routinely be conducted, if the savings association distinguishes that area from the teller window area. The regulation also requires this segregation of functions into separate areas "to the extent practicable." If it is not practicable for a small institution to have separate areas, it could make other efforts to satisfy the separation of functions between deposit taking and selling of insurance.

We note that in addition to these specific responses to concerns expressed with reference to impact on small entities, we have limited the scope of the rule in other ways to minimize compliance burdens. The final rule:

- Only applies to retail sales, solicitations, advertisements, or offers of insurance products or annuities to *individuals* purchasing for personal, family, or household use. The Agencies have determined, after requesting comment on whether to also include small business purchase, not to broaden the coverage.

- Does not apply to subsidiaries of depository institutions, except where the 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 adopting 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.

- Clarifies the scope of the rule and the definition of "you" to apply only to transactions conducted by the person that are by, at an office of, or on behalf of, the savings association.

- Defines "office" narrowly to include only premises where retail deposits are accepted from the public.

- Clarifies when certain disclosures must be provided, including that a disclosure such as "not insured by any federal agency" is not to be given where it would be inaccurate (as in the case of federally-insured crop insurance or flood insurance).

- Only requires the anti-coercion disclosure to be made once, instead of twice per transaction.

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

- Provides that, in the case of telephone sales, the duty to obtain a consumer's acknowledgment of receiving the disclosures may be satisfied by an oral acknowledgment of disclosures combined with reasonable efforts to obtain a written acknowledgment.

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

- Provides for a delayed effective date, requiring compliance by April 1, 2001, to permit adequate time to prepare disclosures and acknowledgment materials and train staff.

4. Projected Reporting, Recordkeeping and Other Compliance Requirements

While the scope of the final rule 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 this final rule. 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 final rule 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 final rule does not appear to conflict materially with the Interagency Statement or these other authorities.

As a result of the overlap of the rule's requirements with the provisions of the Interagency Statement and other federal authorities discussed above, many savings associations and other persons may already be partly or fully prepared to meet the requirements of the final rule. 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. 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 delayed effective date of the final rule should provide adequate time for the affected parties to develop revised materials and to modify web sites, as necessary.

5. Significant Alternatives

The requirements in the final rule parallel those in section 47 of FDIA. The final rule clarifies the statutory requirements in some areas and restates the requirements in a more understandable manner in other areas. The final rule does not impose any requirements that differ substantially from the statute. 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 3 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), at the office or on behalf of a depository institution, must comply with these disclosure requirements. 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.

C. Executive Order 12866

OCC: The OCC has determined that this final rule does 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 final rule 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 final rule falls well short of the thresholds established by the Executive Order.

OTS: OTS has determined that this final rule does 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. OTS believes that the impact of the rule would not meet the thresholds of the Executive Order, and consequently OMB review is not necessary.

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. Section 305(e) of the G-L-B Act imposes the requirements contained in the final rules concerning domestic violence even without the issuance of regulations. Sections 305(a)-(d) of the G-L-B Act direct the Agencies to issue regulations implementing disclosure requirements and requirements to segregate the areas in which insurance activities are conducted from the areas where deposits are routinely accepted. The burden the rules place on the private sector is almost entirely attributable to the G-L-B Act. Therefore, the OCC and OTS have determined that the final rules 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.

This final rule satisfies 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).

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 impact 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.

As we indicated in the Supplementary Information that accompanied the proposal, 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.

Separately, section 305 of the G–L–B Act 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 in preparing this final rule. The Agencies have provided the OMB a copy of the NAIC's written comments on the proposed rule.

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 by the Board, the OCC, and the FDIC in accordance with certain specified procedures described in greater detail in the OCC's statement on Executive Order 13132 above.

OTS has determined that application of these statutorily-mandated provisions 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, OTS and the other Agencies have consulted with the National Association of Insurance Commissioners (NAIC), as indicated in the Supplementary Information above. As noted above, the Agencies considered and responded to the NAIC's comments. The Agencies also provided an advance copy of the final rule to the NAIC and OTS has provided an advance copy of the final rule to the Conference of State Bank Supervisors. The Agencies expect to consult with the NAIC and State insurance regulators as decisions are made concerning preemption in particular states.

Solicitation of Comments on Use of "Plain Language"

Section 722 of the G–L–B Act requires that the Federal banking Agencies use "plain language" in all proposed and final rules published after January 1, 2000. We invited your comments on how to make the proposed rules easier to understand. We received no comments on this general topic, only on ways to clarify the meaning of such terms as "covered person." We did make revisions in response to those specific types of comments, as discussed above.

List of Subjects

12 CFR Part 14

Banks, banking, Insurance consumer protection, National banks.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Insurance consumer protection, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 343

Banks, banking, consumer protection, Insurance, Reporting and recordkeeping requirements.

12 CFR Part 536

Consumer protection, Insurance, 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 amends 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 A 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.

(a) *General rule.* 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:

- (1) Any national bank; or
- (2) Any other person that is engaged in such activities at an office of the bank or on behalf of the bank.

(b) *Application to operating subsidiaries.* 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 bank or on behalf of a 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) *Bank* means a national bank or 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.*)

(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 U.S.C. 1841(o)(10)).

(d) *Consumer* means an individual who purchases, applies to purchase, or is solicited to purchase from a covered person insurance products or annuities primarily for personal, family, or household purposes.

(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)(1) *Covered person* means:

- (i) A bank; or
- (ii) Any other person only when the person sells, solicits, advertises, or offers an insurance product or annuity to a consumer at an office of the bank or on behalf of a bank.

(2) 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 at least one of the following applies:

(i) 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;

(ii) The bank refers a consumer to a seller of insurance products or annuities and the bank has a contractual arrangement to receive commissions or fees derived from a sale of an insurance product or annuity resulting from that referral; or

(iii) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the bank.

(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)).

§ 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 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 an 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 sell or offer for sale, as principal, agent, or broker, any life or health insurance product if the status of the

applicant or insured as a victim of domestic violence or as a provider of services to victims of domestic violence is considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of such product, or with regard to the payment of insurance claims on such product, except as required or expressly permitted under State law.

§ 14.40 What a covered person must disclose.

(a) *Insurance 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, except to the extent the disclosure would not be accurate, that:

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

(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.

(b) *Credit disclosure.* In the case of an application for credit in connection with which an insurance product or annuity is solicited, offered, or sold, a covered person must disclose that the bank may not condition an extension of credit on either:

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

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

(c) *Timing and method of disclosures.*

(1) *In general.* 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. The disclosure required by paragraph (b) of this section must 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 is solicited, offered, or sold.

(2) *Exception for transactions by mail.* If a sale of an insurance product or annuity is conducted by mail, a covered person is not required to make the oral disclosures required by paragraph (a) of this section. If a covered person takes an

application for credit by mail, the covered person is not required to make the oral disclosure required by paragraph (b).

(3) *Exception for transactions by telephone.* If a sale of an insurance product or annuity is conducted by telephone, a covered person may provide the written disclosures required by paragraph (a) of this section by mail within 3 business days beginning on the first business day after the sale, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a). If a covered person takes an application for credit by telephone, the covered person may provide the written disclosure required by paragraph (b) of this section by mail, provided the covered person mails it to the consumer within three days beginning the first business day after the application is taken, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(4) *Electronic form of disclosures.* (i) Subject to the requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (12 U.S.C. 7001(c)), a covered person may provide the written disclosures required by paragraph (a) and (b) of this section through electronic media instead of on paper, if the consumer affirmatively consents to receiving the disclosures electronically and 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) Any disclosures required by paragraphs (a) or (b) of this section that are provided by electronic media are not required to be provided orally.

(5) *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 in visual media, such as television broadcasting, ATM screens, billboards, signs, posters and written advertisements and promotional materials, as appropriate and consistent with paragraphs (a) and (b) 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

(6) *Disclosures must be meaningful.* (i) A covered person must provide the disclosures required by paragraphs (a)

and (b) of this section in a meaningful form. Examples of the types of methods that could call attention to the nature and significance of the information provided include:

(A) A plain-language heading to call attention to the disclosures;

(B) A typeface and type size that are easy to read;

(C) Wide margins and ample line spacing;

(D) Boldface or italics for key words; and

(E) Distinctive type style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

(ii) 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.

(iii) 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.

(7) *Consumer acknowledgment.* A covered person must obtain from the consumer, at the time a consumer receives the disclosures required under paragraphs (a) or (b) of 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 covered person may permit a consumer to acknowledge receipt of the disclosures electronically or in paper form. If the disclosures required under paragraphs (a) or (b) of this section are provided in connection with a transaction that is conducted by telephone, a covered person must:

(i) Obtain an oral acknowledgment of receipt of the disclosures and maintain sufficient documentation to show that the acknowledgment was given; and

(ii) Make reasonable efforts to obtain a written acknowledgment from the consumer.

(d) *Advertisements and other promotional material for insurance products or annuities.* The disclosures described in paragraph (a) of this section are required in advertisements and promotional material for insurance products or annuities unless the advertisements and promotional materials are of a general nature

describing or listing the services or products offered by the bank.

§ 14.50 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.

§ 14.60 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 A to Part 14—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 this part should contact the Customer Assistance Group, Office of the Comptroller of the Currency, (800) 613-6743, 1301 McKinney Street, Suite 3710, Houston, Texas 77010-3031.

Dated: November 17, 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 amends 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 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.

Subpart H [Redesignated as Subpart I]

2. The existing subpart H—Interpretations is redesignated as subpart I.

3. A new subpart H is 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 A 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:

- (a) Any state member bank; or
- (b) Any other person that is engaged in such activities at an office of the 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) *Bank* means a state member bank.
- (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 U.S.C. 1841(o)(10)).

(d) *Consumer* means an individual who purchases, applies to purchase, or is solicited to purchase from you insurance products or annuities primarily for personal, family, or household purposes.

(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) *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 you 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 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)).

(j)(1) *You* means:

(i) A bank; or

(ii) Any other person only when the person sells, solicits, advertises, or offers an insurance product or annuity to a consumer at an office of the bank or on behalf of a bank.

(2) 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 at least one of the following applies:

(i) 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;

(ii) If the bank refers a consumer to a seller of insurance products or annuities and the bank has a contractual arrangement to receive commissions or fees derived from the sale of an insurance product or annuity resulting from that referral; or

(iii) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the bank.

§ 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 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 an 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 sell or offer for sale, as principal, agent, or broker, any life or health insurance product if the status of the applicant or insured as a victim of domestic violence or as a provider of services to victims of

domestic violence is considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of such product, or with regard to the payment of insurance claims on such product, except as required or expressly permitted under State law.

§ 208.84 What you must disclose.

(a) *Insurance disclosures.* In connection with the initial purchase of an insurance product or annuity by a consumer from you, you must disclose to the consumer, except to the extent the disclosure would not be accurate, that:

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

(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.

(b) *Credit disclosure.* In the case of an application for credit in connection with which an insurance product or annuity is solicited, offered, or sold, you must disclose that the bank may not condition an extension of credit on either:

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

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

(c) *Timing and method of disclosures.*

(1) *In general.* 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. The disclosure required by paragraph (b) of this section must be made orally and in writing at the time the consumer applies for an extension of credit in connection with which insurance is solicited, offered, or sold.

(2) *Exceptions for transactions by mail.* If a sale of an insurance product or annuity is conducted by mail, you are not required to make the oral disclosures required by paragraph (a) of this section. If you take an application for credit by mail, you are not required to make the oral disclosure required by paragraph (b) of this section.

(3) *Exception for transactions by telephone.* If a sale of an insurance product or annuity is conducted by

telephone, you may provide the written disclosures required by paragraph (a) of this section by mail within 3 business days beginning on the first business day after the sale, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a). If you take an application for such credit by telephone, you may provide the written disclosure required by paragraph (b) of this section by mail, provided you mail it to the consumer within three days beginning the first business day after the application is taken, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(4) *Electronic form of disclosures.* (i) Subject to the requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (12 U.S.C. 7001(c)), you may provide the written disclosures required by paragraphs (a) and (b) of this section through electronic media instead of on paper, if the consumer affirmatively consents to receiving the disclosures electronically and 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) Any disclosures required by paragraphs (a) or (b) of this section that are provided by electronic media are not required to be provided orally.

(5) *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, in visual media, such as television broadcasting, ATM screens, billboards, signs, posters and written advertisements and promotional materials, as appropriate and consistent with paragraphs (a) and (b) 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

(6) *Disclosures must be meaningful.*

(i) You must provide the disclosures required by paragraphs (a) and (b) of this section in a meaningful form. Examples of the types of methods that could call attention to the nature and significance of the information provided include:

(A) A plain-language heading to call attention to the disclosures;

(B) A typeface and type size that are easy to read;

(C) Wide margins and ample line spacing;

(D) Boldface or italics for key words; and

(E) Distinctive type size, style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

(ii) 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.

(iii) 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.

(7) *Consumer acknowledgment.* You must obtain from the consumer, at the time a consumer receives the disclosures required under paragraphs (a) or (b) of 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. You may permit a consumer to acknowledge receipt of the disclosures electronically or in paper form. If the disclosures required under paragraphs (a) or (b) of this section are provided in connection with a transaction that is conducted by telephone, you must:

(i) Obtain an oral acknowledgment of receipt of the disclosures and maintain sufficient documentation to show that the acknowledgment was given; and

(ii) Make reasonable efforts to obtain a written acknowledgment from the consumer.

(d) *Advertisements and other promotional material for insurance products or annuities.* The disclosures described in paragraph (a) of this section are required in advertisements and promotional material for insurance products or annuities unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the bank.

§ 208.85 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.

§ 208.86 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 A to Subpart H—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 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 order of the Board of Governors of the Federal Reserve System, November, 21, 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 amends 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 you must disclose.

343.50 Where insurance activities may take place.

343.60 Qualification and licensing requirements for insurance sales personnel.

Appendix A 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:

(a) Any bank; or

(b) Any other 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 U.S.C. 1841(o)(10)).

(d) *Consumer* means an individual who purchases, applies to purchase, or is solicited to purchase from you insurance products or annuities primarily for personal, family, or household purposes.

(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) *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 you 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 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)).

(j) (1) *You* means:

(i) A bank; or

(ii) Any other person only when the person sells, solicits, advertises, or offers an insurance product or annuity to a consumer at an office of the bank or on behalf of a bank.

(2) 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 at least one of the following applies:

(i) 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;

(ii) The bank refers a consumer to a seller of insurance products or annuities and the bank has a contractual arrangement to receive commissions or fees derived from a sale of an insurance product or annuity resulting from that referral; or

(iii) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the bank.

§ 343.30 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 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 an 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 sell or offer for sale, as principal, agent, or broker, any life or health insurance product if the status of the applicant or insured as a victim of domestic violence or as a provider of services to victims of domestic violence is considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of such product, or with regard to the payment of insurance claims on such product, except as required or expressly permitted under State law.

§ 343.40 What you must disclose.

(a) *Insurance disclosures.* In connection with the initial purchase of an insurance product or annuity by a consumer from you, you must disclose to the consumer, except to the extent the disclosure would not be accurate, that:

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

(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.

(b) *Credit disclosure.* In the case of an application for credit in connection with which an insurance product or annuity is solicited, offered, or sold, you must disclose that the bank may not condition an extension of credit on either:

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

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

(c) *Timing and method of disclosures.*

(1) *In general.* 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. The disclosure required by paragraph (b) of this section must 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 is solicited, offered, or sold.

(2) *Exception for transactions by mail.* If a sale of an insurance product or annuity is conducted by mail, you are not required to make the oral disclosures required by paragraph (a) of this section. If you take an application for credit by mail, you are not required to make the oral disclosure required by paragraph (b).

(3) *Exception for transactions by telephone.* If a sale of an insurance product or annuity is conducted by telephone, you may provide the written disclosures required by paragraph (a) of this section by mail within 3 business days beginning on the first business day after the sale, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a). If you take an application for credit by telephone, you may provide the written disclosure required by paragraph (b) of this section by mail, provided you mail it to the consumer within three days beginning the first business day after the application is taken, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(4) *Electronic form of disclosures.* (i) Subject to the requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (12 U.S.C. 7001(c)), you may provide the written disclosures required by paragraph (a) and (b) of this section through electronic media instead of on paper, if the consumer affirmatively

consents to receiving the disclosures electronically and 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) Any disclosure required by paragraphs (a) or (b) of this section that is provided by electronic media is not required to be provided orally.

(5) *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 in visual media, such as television broadcasting, ATM screens, billboards, signs, posters and written advertisements and promotional materials, as appropriate and consistent with paragraphs (a) and (b) 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

(6) *Disclosures must be meaningful.*

(i) You must provide the disclosures required by paragraphs (a) and (b) of this section in a meaningful form. Examples of the types of methods that could call attention to the nature and significance of the information provided include:

(A) A plain-language heading to call attention to the disclosures;

(B) A typeface and type size that are easy to read;

(C) Wide margins and ample line spacing;

(D) Boldface or italics for key words; and

(E) Distinctive type size, style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

(ii) 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 do not provide the printed material when required and do not orally disclose the information to the consumer when required.

(iii) 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.

(7) *Consumer acknowledgment.* You must obtain from the consumer, at the

time a consumer receives the disclosures required under paragraphs (a) or (b) of 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. You may permit a consumer to acknowledge receipt of the disclosures electronically or in paper form. If the disclosures required under paragraphs (a) or (b) of this section are provided in connection with a transaction that is conducted by telephone, you must:

(i) Obtain an oral acknowledgment of receipt of the disclosures and maintain sufficient documentation to show that the acknowledgment was given; and

(ii) Make reasonable efforts to obtain a written acknowledgment from the consumer.

(d) *Advertisements and other promotional material for insurance products or annuities.* The disclosures described in paragraph (a) of this section are required in advertisements and promotional material for insurance products or annuities unless the advertisements and promotional materials are 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 A 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 this part 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 dcainetnet@fdic.gov.

By order of the Board of Directors.
Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 21st day of November, 2000.

Robert E. Feldman,
Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons set out in the joint preamble, OTS amends 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 A to Part 536—Consumer Grievance Process.

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

§ 536.10 Purpose and scope.

(a) *General rule.* 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:

- (1) Any savings association; or
- (2) Any other person that is engaged in such activities at an office of a savings association or on behalf of a savings association.

(b) *Application to operating subsidiaries.* For purposes of § 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 purchases, applies to purchase, or is solicited to purchase from a covered person insurance products or annuities primarily for personal, family, or household purposes.

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)).

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 a covered person 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 Federal Deposit Insurance Act (12 U.S.C. 1813(w)(4)).

You means:

(1) A savings association, as defined in § 561.43 of this chapter; or

(2) Any other person only when the person sells, solicits, advertises, or offers an insurance product or annuity 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 the savings association or at another location, sells, solicits, advertises, or offers an insurance product or annuity and at least one of the following applies:

(i) 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 savings association;

(ii) The savings association refers a consumer to a seller of insurance products and annuities and the savings association has a contractual arrangement to receive commissions or fees derived from a sale of an insurance product or annuity resulting from that referral; or

(iii) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the savings association.

§ 536.30 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 5(q) of the Home Owners' Loan Act (12 U.S.C. 1464(q)), 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 an insurance product or annuity you or any subsidiary of a savings association sell or offer for sale 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 a 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 sell or offer for sale, as principal, agent, or broker, any life or health insurance product if the status of the applicant or insured as a victim of domestic violence or as a provider of services to victims of domestic violence is considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of such product, or with regard to the payment of insurance claims on such product, except as required or expressly permitted under State law.

§ 536.40 What you must disclose.

(a) *Insurance disclosures.* In connection with the initial purchase of an insurance product or annuity by a consumer from you, you must disclose to the consumer, except to the extent the disclosure would not be accurate, that:

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

(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.

(b) *Credit disclosures.* In the case of an application for credit in connection with which an insurance product or annuity is solicited, offered, or sold, you must disclose that a savings association may not condition an extension of credit on either:

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

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

(c) *Timing and method of disclosures.*

(1) *In general.* 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. The disclosure required by paragraph (b) of this section must 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 is solicited, offered, or sold.

(2) *Exception for transactions by mail.* If you conduct an insurance product or annuity sale by mail, you are not required to make the oral disclosures required by paragraph (a) of this section. If you take an application for credit by mail, you are not required to make the oral disclosure required by paragraph (b) of this section.

(3) *Exception for transactions by telephone.* If a sale of an insurance product or annuity is conducted by telephone, you may provide the written disclosures required by paragraph (a) of this section by mail within 3 business days beginning on the first business day after the sale, solicitation, or offer, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a). If you take an application for credit by telephone, you may provide the written disclosure required by paragraph (b) of this section by mail, provided you mail it to the consumer within three days beginning the first business day after the application is taken, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(4) *Electronic form of disclosures.* (i) Subject to the requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (12 U.S.C. 7001(c)), you may provide the written disclosures required by paragraph (a) and (b) of this section through electronic media instead of on paper, if the consumer affirmatively consents to receiving the disclosures electronically and 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) You are not required to provide orally any disclosures required by paragraphs (a) or (b) of this section that you provide by electronic media.

(5) *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 in visual media, such as television broadcasting, ATM screens, billboards, signs, posters and written advertisements and promotional materials, as appropriate and consistent with paragraphs (a) and (b) of this section:

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

(6) *Disclosures must be meaningful.*

(i) You must provide the disclosures required by paragraphs (a) and (b) of this section in a meaningful form. Examples of the types of methods that could call attention to the nature and significance of the information provided include:

- (A) A plain-language heading to call attention to the disclosures;
- (B) A typeface and type size that are easy to read;
- (C) Wide margins and ample line spacing;
- (D) Boldface or italics for key words; and
- (E) Distinctive type size, style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

(ii) 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 do not provide the printed material when required and do not orally disclose the information to the consumer when required.

(iii) 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.

(7) *Consumer acknowledgment.* You must obtain from the consumer, at the time a consumer receives the disclosures required under paragraphs (a) or (b) of 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. You may permit a consumer to acknowledge receipt of the disclosures electronically or in paper form. If the disclosures required under paragraphs (a) or (b) of this section are provided in connection with a transaction that is conducted by telephone, you must:

(i) Obtain an oral acknowledgment of receipt of the disclosures and maintain sufficient documentation to show that the acknowledgment was given; and

(ii) Make reasonable efforts to obtain a written acknowledgment from the consumer.

(d) *Advertisements and other promotional material for insurance products or annuities.* The disclosures described in paragraph (a) of this section are required in advertisements and promotional material for insurance products or annuities unless the advertisements and promotional material are of a general nature describing or listing the services or products offered by a savings association.

§ 536.50 Where insurance activities may take place.

(a) *General rule.* A savings association must, to the extent practicable:

(1) 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;

(2) Identify the areas where insurance product or annuity sales activities occur; and

(3) 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 A 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 the 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.complaint@ots.treas.gov.

Dated: November 21, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 00-30404 Filed 12-1-00; 8:45 am]

**BILLING CODE 4810-33-P; 6210-01-P; 6714-01-P;
6720-01-P**