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DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
RE: 12 CFR Chap. I; [Docket No. 004-05]

regs.comments@occ.treas.gov

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
RE: 12 CFR Chap. II; [Docket No. R-1180]

regs.comments@federalreserve.gov.

FEDERAL DEPOSIT INSURANCE CORPORATION
RE: 12 CFR Chap. III

comments@fdic.gov.

DEPARTMENT OF THE TREASURY
Office of Thrift Supervision
RE: 12 CFR Chap. V; [No. 2003-67]

regs.comments@ots.treas.gov

RE: Request for Burden Reduction Recommendations; Consumer Protection: Lending-Related Rules; Economic Growth and Regulatory Paperwork Reduction Act of 1996 Review

Dear Federal Financial Institution Agencies:

On behalf of the Pennsylvania Bankers Association, I am writing to request that your agencies suggest that Congress make the following amendments to federal law regarding credit insurance and fixed rate annuities:

Proposed Amendment to Section 47 of the Federal Deposit Insurance Act

Section 47(c)(1) of the Federal Deposit Insurance Act (12 USC 1831x(c)(1)) is amended by adding the following new clause at the end thereof:

“(G) Exclusions. –

“(i) Paragraph (1) shall not apply to credit insurance; and

“(ii) Subclause (ii) in paragraph (1)(A), which relates to investment risk, shall not apply to fixed rate annuities and term life insurance.”

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Every man owes some of his time to the upbuilding of the profession to which he belongs. – Theodore Roosevelt

Explanation of the Requested Amendment

Section 47 of the Federal Deposit Insurance Act establishes certain protections for consumers who purchase insurance products from depository institutions. These protections include a disclosure that insurance products are not backed by the Federal Deposit Insurance Corporation, that such products may involve an investment risk, and that the purchase of an insurance product cannot be conditioned upon the approval of a loan. This disclosure is intended to distinguish insurance products from other banking products, especially insured deposit products.

Section 47, however, does not define the term “insurance product”. As a result, the statute has been interpreted to apply to all types of insurance products, even insurance products for which the disclosure either is not necessary or is potentially confusing to the consumer. To address this problem, the proposed amendment would modify the scope of the disclosure requirement in two respects.

Credit Insurance

The amendment would exclude credit insurance from the disclosure requirement. Credit insurance does not have the characteristics of a deposit product or an investment product. Deposit and investment products involve the placement of a sum of money by a consumer with an institution in exchange for a certificate or some security that promises a rate of return on the funds, or has the potential for earning some return. In contrast, credit insurance involves the payment of a fee by a borrower in exchange for a promise by an insurance company to pay off the balance of a loan in the event a borrower dies or becomes disabled. Credit insurance, therefore, cannot be confused easily with a deposit or investment product.

Additionally, lenders already provide consumers a disclosure in connection with credit insurance sales. Regulation Z, which implements the Truth-in-Lending Act (TILA), provides that the cost of credit insurance may be excluded from the required TILA disclosure if a lender separately discloses to the consumer that the insurance coverage is not required, provides the consumer with information about the cost of the insurance, and obtains an affirmative written request from the consumer to purchase the insurance. This existing TILA disclosure ensures that consumers are fully aware of the nature and terms of credit insurance.

Furthermore, while the amendment would delete the disclosure that an extension of credit cannot be conditioned upon the sale of credit insurance, it does not delete the provisions in Section 47 that otherwise prohibit depository institutions from engaging in coercive sales practices, including the tying of credit and insurance. Therefore, such practices remain illegal.

Fixed Rate Annuities

The amendment also would exclude fixed rate annuities from the investment risk disclosure. Section 47 does not define the term “investment risk”. In the context of insurance, however, the term has been defined to be “the possibility of a reduction in value of an insurance instrument resulting from a decrease in the value of the assets incorporated in the investment portfolio underlying the insurance instrument.” (Barron’s Dictionary of Insurance Terms) Fixed rate annuities present no such risk to a policyholder. A fixed-rate annuity is a contract between a policymaker and an insurer that requires a policyholder to pay either a lump sum or periodic payments to the insurer to establish the principal upon which the insurer guarantees the policyholder a fixed rate of return. In other words, with a fixed rate annuity, a policyholder faces no possibility of a reduction in the value of the contract; the return to the policyholder is guaranteed. The investment risk, if any, rests with the insurance company, which issues the guarantee. Therefore, making the investment risk disclosure to consumers can be confusing and misleading as to the actual type of risk associated with a fixed rate annuity. Furthermore, should an insurance company become insolvent, state guaranty funds would step into protect annuity policies up to a certain amount (as much as \$400,000 for individuals).

Additionally, when Section 47 was enacted, Congress clearly signaled that the investment risk disclosure was required only in connection with variable annuities, not fixed annuities. The relevant part of Section 47 reads as follows:

(A) IN GENERAL. – Requirements that the following disclosures be made orally and in writing before the completion of the initial sale ...

(i) UNINSURED STATUS. --

(ii) INVESTMENT RISK. -- *In the case of a variable annuity* or other insurance product which involves an investment risk, that there is an investment risk associated with the product, including possible loss of value. ... (emphasis added)

In implementing Section 47, however, some of the federal banking agencies have required the investment risk disclosure in connection with fixed rate annuities.

PBA respectfully requests that you forward this suggested change to Congress in connection with your regulatory burden reduction project.

If you have any questions, please do not hesitate to contact us.

Sincerely,



Louise A. Rynd