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NBA Nebraska Bankers Association

September 26, 2000

Manager
Dissemination Branch
Information Management & Services Division
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552
Attention: Docket No. 2000-68
FAX: 202-906-7755

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429
Attention: Comments/OES
FAX: 202-898-3838

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th and C Streets, N.W.
Washington, D.C. 20551
Attention: Docket No. R-1079
E-MAIL: regs.comments@federalreserve.gov

Communications Division
Office of the Comptroller of the Currency
250 E Street, S.W., Third Floor
Washington, D.C. 20219
Attention: Docket No. 00-16
E-MAIL:regs.comments@occ.treas.gov.

Dear Sir or Madam:

The Nebraska Bankers Association (NBA) appreciates the opportunity to comment on the proposed consumer protection regulation applicable to insurance sales by depository institutions that has been jointly issued by the federal banking agencies in response to Section 305 of the Gramm-Leach-Bliley Act (Section 305). The NBA is a trade association representing 278 of the 280 commercial banks and seven savings and loans in the state of Nebraska.

Many NBA members currently engage in the sale of insurance and annuities, and have been complying with the sales practice standards set forth in the Interagency Statement on Retail Sales of Non-deposit Investment Products (the "Interagency Statement") and the Office of the Comptroller of the Currency's Guidance for National Banks on Insurance and Annuity Sales Activities ("Advisory Letter 96-8"), which are similar to the proposed regulation.

Effective Date

In responding to the request for comments, we would ask that enforcement of the final regulation be delayed to give depository institutions time to comply with the regulation

Section 305 directs the federal banking agencies to issue final consumer protection regulations by November 12, 2000. Since the proposed regulation would require depository institutions to alter existing disclosure policies and practices, modify various systems changes and train personnel, additional time will be needed to bring depository institutions into compliance with the regulation. Accordingly, we recommend that the agencies delay enforcement of the final regulation until at least six months after the regulation is issued.

Definitions

A number of questions were asked in the proposed regulation regarding the scope of specific definitions. Specifically, you have asked if the proposed definition of "consumer" should be expanded to include all retail customers, including small businesses, or be limited to individuals who obtain or apply for insurance products or annuities primarily for personal, family or household purposes. It is our belief that the definition of "consumer" should be limited to individuals who obtain or apply for insurance products or annuities primarily for personal, family or household purposes. Section 305 is clearly designed to cover individual consumers. For example, Section 305 requires that the disclosures be provided orally, and in writing, and that they be "conspicuous, simple, direct and readily understandable." Such detailed requirements are appropriate for individuals who may not be financially sophisticated; they are not required for business customers.

You have also asked if activities "on behalf of" an institution should include (a) the use of the name or corporate logo of the holding company or another affiliate, and (b) 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 affiliate. We so not believe that either of these activities should be deemed activities "on behalf of" an institution. Section 305 is directed at the activities of depository institutions, and not at the activities of parent holding company or any non-depository affiliate.

Section __.20(f)(2) of the proposed regulation provides that a person will be deemed to be acting "on behalf of" a depository institution if the 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. We do not believe that this provision should be included in the final regulation.

In a typical cross-marketing or referral case, a depository institution will have no contact, whatsoever, with a consumer who purchases an insurance product or annuity. The

depository institution will share a list of customers or make a referral of a consumer to an affiliate or other third party, and it will be the affiliate or other third party that will solicit and sell the insurance product or annuity to the consumer. The consumer will not be aware of any fee or commission arrangement between the depository institution and the affiliate or other third party. It should not matter to a consumer how fees or commissions are divided after the sale of an insurance product or annuity. The disclosures required by Section 305 are intended to shield a consumer from certain practices before, not after, the sale of insurance. It could be quite confusing for a consumer to receive disclosures regarding a depository institution with which the consumer has had no contact.

The NBA agrees that there is no single definition of insurance, and that it would be better for the federal banking agencies to refrain from defining the term insurance in the regulation, but rather to look to a variety of sources in determining whether a product should be covered by the regulations. However, we would recommend that you clarify that certain products are NOT insurance for purposes of the regulation. Clearly, if you have the power to define what is insurance for purposes of the regulation, you also have the power to define what is not insurance for purposes of the regulation.

For example, credit-related insurance products should not be treated as insurance for purposes of the regulation. Credit-related insurance has long been distinguished from other forms of insurance. The OCC has opined that credit-related insurance sales and underwriting are incidental to the business of banking and permissible for national banks under the terms of 12 U.S.C. 24. Currently, neither the Interagency Statement nor the OCC Advisory Letter 96-8 subject the sale of credit insurance to disclosure requirements like those required by Section 305.

Credit insurance sales already are subject to appropriate consumer safeguards. The anti-tying provisions of the Bank Holding Company Act apply to credit insurance sales made in connection with an extension of credit. Regulation Z treats premiums for credit insurance as a finance charge, unless the creditor does not require the insurance, the premium is disclosed to the consumer and they affirmatively request the insurance.

In addition, we do not believe that property and casualty insurance products should be subject to the regulation. Section 305 is patterned, in part, after the Interagency Statement, and that Statement does not apply to property and casualty insurance. It is difficult to envision a case in which a consumer could confuse an automobile or home insurance policy with a savings or investment product.

Disclosures

We believe that certain features of the disclosures required under the proposed regulations should be eliminated.

Certain features of proposed Section __.40(b) may be confusing to consumers, and should be eliminated. One potential source of confusion for a consumer is the requirement that the anti-tying disclosure be given even in cases in which the consumer has not applied for

an extension of credit. In such cases, tie-in sales simply are not possible, and a disclosure that suggests that they are may well confuse a consumer. Another potential source of confusion for a consumer is the requirement that the consumer receive and acknowledge the anti-tying disclosure twice, once when the consumer applies for the credit, and a second time just before the consumer purchases insurance. Since the intent of Section 305 is to protect, and not confuse, consumers, we urge you to eliminate these two potentially confusing features of the proposed regulation.

The disclosure requirements in Section. __.40(b) should also be adjusted to accommodate telephone and direct mail sales activities. Providing an oral disclosure to a consumer prior to consummating the sale of an insurance product or annuity through the mail or providing a written disclosure when such products are sold over the telephone will be difficult, if not impossible. These requirements should accordingly be adjusted.

For telephone sales, we recommend that the requirement for written disclosure be waived or in the alternative that the disclosure be required to be mailed to a consumer within three days of the sale. In the case of sales conducted through the mail, the oral disclosure requirement should be waived.

Section__.40(b)(1)(ii) of the proposed regulation provides that, in the case of credit applications taken over the phone, the written disclosure required by Section __.40(a)(4) of the proposed regulation (the anti-tying disclosure) may be mailed to the consumer within three days, excluding Sundays and legal holidays. Clarification should be provided regarding when the three-day period for mailing the written notice commences. Starting it on the business day after the transaction would be recommended in that a next business day rule would accommodate processing and mail schedules.

The proposed regulation has requested guidance regarding whether the regulation should provide specific methods for calling attention to the material contained in the disclosures. This does not appear to be required by the federal law and should be disregarded..

Section __.40(b)(5) of the proposed regulation requires a covered person to obtain a written acknowledgment from a consumer at the time the consumer receives the disclosures required by Section __.40(a). Compliance with this requirement would be difficult at best in the case of telephone sales or sales conducted through the mail. Accordingly the written acknowledgement requirement should be waived in such cases.

Location and Referral Fees

Section __.50(a) provides that transactions involving insurance be physically segregated from areas where retail deposits are routinely accepted. In the final regulation, we urge the agencies to clarify that this provision is intended solely to segregate insurance sales activities from traditional teller windows, and does not apply to so-called "platform" programs under which branch employees, who are not tellers, will engage in a variety of activities including the origination of loans, the sale of insurance and annuities and,

occasionally, the acceptance of deposits. We believe that such an interpretation is consistent with the statute's use of the term "routine."

Thank you again for the opportunity to comment on the proposed consumer protection regulation applicable to insurance sales by depository institutions.

Very truly yours,

Robert J. Hallstrom

Robert J. Hallstrom

RJH/rb