(15)

October 5, 2000

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System,
Docket No. R-1079
regs.comments@federalreserve.gov

Manager, Dissemination Branch
Information Management & Services Division
Office of Thrift Supervision
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Robert E. Feldman, Executive Secretary
Attention: Comments/OES
Federal Deposit Insurance Corporation
FAX: (202) 898-3838

Re: Consumer Protection in Sales of Insurance
Board of Governors of the Federal Reserve System—12 CFR Part 208
Office of Thrift Supervision—12 CFR Part 536
Federal Deposit Insurance Corporation—12 CFR Part 343

Capital One Financial Corporation is a holding company whose principal subsidiaries, Capital One Bank and Capital One, F.S.B., offer consumer lending products. Capital One's subsidiaries are among the largest providers of MasterCard and Visa credit cards in the world. We appreciate the opportunity to comment of these proposed Regulations.

1. **FIIA Comments.** We endorse the comments submitted by the Financial Institutions Insurance Association to each of the Agencies with respect to the proposed Regulations cited above.

2. **Definitions for purposes of this subpart.** These Regulations present an opportunity for the Agencies to bring some order out of the wildly varying interpretations of terms like "solicitation", "endorsement", "offer", "referral", and "commission". The lack of clarity around these terms enervates financial institutions that would like to participate in the insurance market. Unfortunately, the broad definition of "on behalf of" the regulated financial institution, seems to treat financial institutions the same whether the bank sells the insurance or simply lends the use of its corporate logo.

   We believe, for example, that a bank's telephone customer service representative who simply asks a caller whether the caller might be interested in insurance has *not* solicited the customer (for which the CSR must be licensed as an insurance agent). We believe a bank can be compensated for the use of its customer list in an insurance cross-sell agreement as a percentage of the premium written without the bank being deemed to be an agent; the method of compensation to a bank may be evidentiary of its status in the cross-sell relationship, but it should not the sole criterion. We believe a bank's endorsement of an insurance product does not mean the bank has solicited the product.

3. **What you must disclose.**
Timing and method of disclosures. The four required disclosures, which we already make to our customers, will have to be made "orally and in writing before the completion of the initial sale." This is reasonable when the insurance product is sold in a financial institution's retail establishment and the sale of insurance is made face to face with the customer. The Regulation provides for two exceptions: (1) if the solicitation is by telephone, *one* of the four required disclosures may be made by mail three days later; and (2) if the solicitation is made electronically, the disclosures may be made through electronic media, not paper or orally, but only if the consumer affirmatively consents.

The oral disclosure would be impossible if the customer were solicited by direct mail for a credit card and simultaneously solicited for credit insurance. The written procedure would be impossible with respect to the other three required disclosures when the solicitation is made by telephone. The written and oral procedures would be impossible if the consumer failed to affirmatively consent to electronic delivery of the disclosures when the solicitation is made electronically.

We suggest that the method of making the disclosures should match the method of solicitation, i.e., face-to-face = written and oral; direct mail = written; telephone = oral; electronic = electronic, if the disclosures are a necessary step in the process. These suggestions would allow the financial institution to have and retain evidence of having made the required disclosures.

In addition, the three day time period to send written disclosures after a successful telephone solicitation is unreasonably short. As we add more than 20,000 new credit card customers per day, it would be very expensive for us to fulfill on consumer requests if our procedures were not mechanized; we routinely mail our Welcome Package in 7-10 days. A three day time period would require us to handle requests for insurance manually, and the additional expense would probably make it economically infeasible for us to for solicit insurance by telephone.

Consumer acknowledgement. At the time the consumer receives the disclosures, the proposed regulation would require financial institution to obtain a written acknowledgement by the consumer that the consumer received the disclosures. We believe this acknowledgement is unnecessary outside of the face-to-face solicitation. Also, for the reasons described above, this requirement is impossible to meet in a telephone solicitation.

Respectfully submitted,

Vance Gudmundsen, Assistant General Counsel

Capital One Financial Corporation