

DISSEMINATION BRANCH

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October 4, 2000

VIA UNITED PARCEL SERVICE

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

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

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

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

RE: Proposed Consumer Protections for Depository Institution Sales of Insurance

Dear Sir or Madam:

Bank One Corporation ("Bank One") appreciates the opportunity to comment on the referenced proposal (the "Proposal") being issued jointly by The Office of the Comptroller of the Currency, The Board of Governors of the Federal Reserve System, The Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively the "Agencies"). Bank One is a multi-bank holding company headquartered in Chicago, Illinois, with offices located in Arizona, Colorado, Delaware, Florida, Illinois, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Texas, Utah, West Virginia, and Wisconsin. Bank One also operates numerous non-bank subsidiaries that engage in credit card and merchant processing, consumer finance, mortgage banking, insurance, trust and investment management, brokerage, investment and merchant banking, venture capital, equipment leasing and data processing.

Summary.

The following comments are intended to assist the Agencies with developing a final regulation that promotes consumer protection consistent with the mandate of Section 305 of the Gramm-Leach-Bliley Act ("Section 305"), while not imposing unnecessary burdens on depository

institutions. Our primary recommendations are that: 1) the effective date of the final regulation be delayed until July 1, 2001, to provide depository institutions with sufficient time to implement the forms, systems and procedures necessary for compliance; 2) the regulation only apply to individuals that purchase insurance for personal, family or household purposes; 3) the term "insurance" not include credit insurance, debt deferral or debt waiver agreements offered by depository institutions, private mortgage insurance, or property and casualty products; 4) a "covered person" not include persons engaged in activities on behalf of a depository institution's holding company or affiliates; 5) the final regulation require insurance activities to be conducted separate from the teller area, but not from the platform area; and, 6) that a consumer's acknowledgement of receipt of the required disclosures not be required for telephone or mail solicitations.

1. Effective Date.

The final regulation is likely to require depository institutions and other affected parties to change existing disclosures, to implement new policies and procedures, to modify various systems and to train employees on the new requirements, all of which will take a considerable amount of time. Consequently, we recommend that the Agencies delay enforcement of the final regulation until July 1, 2001 to allow depository institutions and other affected parties the time necessary to comply.

2. Definition of Consumer.

You have asked if the definition of "Consumer" should include small businesses or be limited to individuals who obtain or apply for insurance products or annuities primarily for personal, family or household purposes. Bank One recommends that the definition be limited to individuals who obtain or apply for insurance products or annuities primarily for personal, family or household purposes. The Proposal's insurance sales protection measures are clearly directed at individuals who may not be sophisticated enough to fully understand the true nature of an insurance product or the fact that the purchase of an insurance product is wholly unrelated to traditional banking activities. It is unnecessary, therefore, to impose the additional burden and expense on depository institutions that the regulation would carry if it were applied to business customers.

3. Definition of Insurance.

Bank One agrees that there is no single definition of insurance, and that it would be difficult to define the term in the regulation. We request, however, that the Agencies clarify that certain products are not insurance for purposes of the regulation. First, we do not believe that the regulation should apply to credit-related insurance products or to debt waiver and debt deferral products offered by a depository institution. By credit related, we mean credit life, health, accident, disability, family leave, and unemployment insurance; and by debt deferral and waiver products we mean provisions in loan agreements between depository institutions and borrowers under which the depository institutions agree to defer or waive, respectively, all or portions of the loan balance under specified circumstances, such as death, disability, divorce, hospitalization and unemployment. Certain of the Proposal's provisions would be wholly inconsistent with the well-accepted view that sales of credit insurance and debt deferral and debt waiver products are incidental to the business of banking. For example, proposed Section .50 would require the separation of insurance sales from deposit taking functions. This would essentially require a

bank to separate its two core functions, lending and deposit taking, since credit insurance and debt deferral and debt waiver provisions are generally offered at the time a loan is made. Additionally, the Proposal's requirement to disclose that insurance products are not obligations of the depository institution would be confusing, at a minimum, in the context of debt deferral and debt waiver products offered by the depository institution.

Credit insurance sales are already subject to appropriate consumer safeguards. The anti-tying provisions of Section 106(b) of the Bank Holding Company Act Amendments apply to credit insurance sales made in connection with extensions 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 the consumer affirmatively requests the insurance. Additionally, we are unfamiliar with Federal or state laws that impose limitations on the general insurance activities of banking organizations, that do not except-out credit related insurance from the types of consumer protection measures contained in the Proposal.

For similar reasons, private mortgage insurance should also be excluded. Due largely to secondary market considerations, private mortgage insurance has essentially become mandatory for all loans with a loan-to-value ratio in excess of 80%. As a result, this product has been sold through financial institutions for many years, without raising the types of consumer protection issues that are the subject of the Proposed regulation. It is unnecessary, therefore, to impose additional procedural burdens on financial institutions that must offer this product to support their mortgage lending activities.

Finally, 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, which does not apply to property and casualty insurance. It is difficult to envision a case in which a consumer could confuse an automobile, title, or homeowner's insurance policy with a deposit or investment product. Additionally, these products are also already covered by the anti-tying laws. In any event, we recommend that the final regulation exclude property and casualty products from the disclosure requirements that are obviously inapplicable to those products, such as, 'Not FDIC-Insured,' 'Not Insured by any Federal Government Agency,' 'Not Guaranteed by the Bank,' and 'May Go Down in Value.' These disclosures are likely to be confusing in the context of property and casualty products.

4. Definition of Covered Person.

You have also requested comments on whether or not the phrase "on behalf of" the depository institution in the definition of "covered person" should include insurance sales involving documents, or off-premises facilities, that use or display the name or logo of the holding company or an affiliate of the depository institution. Bank One does not believe that either of these instances should be covered under the regulation. Moreover, we do not believe that the inclusion of these activities is supported by the language of Section 305, which very specifically applies to sales by, on the premises of, or on behalf of the "depository institution."

5. Consumer Acknowledgement and Retention.

Bank One requests that, for situations in which an insurance sale is conducted by a "covered person" that is not the depository institution, the final regulation provide that it is the obligation of the covered person to obtain from the consumer, and retain, the written acknowledgement required under Section .40(b), not the obligation of the depository institution. For example, in circumstances where the solicitation of the consumer is conducted through the mail by a third party insurance agency or insurance company, it should be the third party's obligation to obtain and retain the disclosure, not the obligation of the depository institution since the covered person has the contact with the consumer and the depository institution is not directly involved. Additionally, Bank One suggests that the Agencies include a retention period for the consumer acknowledgements of two years from the application date.

6. Consumer Acknowledgement for Telephone and Direct Mail Sales.

We recommend that the disclosure requirements in Section .40 (b) be modified to accommodate telephone and direct mail sales activities. As we read the Proposal, a written acknowledgement concerning the disclosures must be obtained from a consumer before or at the time of a sale, even in cases in which an insurance product or annuity is sold over the telephone or through the mail. Section 305 gives the Agencies the authority to adjust the disclosure requirements for purchases made "in person, by telephone, or by electronic media." We recommend that the final regulation waive the requirement that a written acknowledgement be obtained from the consumer in the case of telephone and mail solicitations. Current telephone and mail solicitation procedures for some insurance products, such as credit insurance and accidental death insurance, do not require that any documentation be returned by the consumer. Requiring the written acknowledgement would unnecessarily add additional expense and time consuming procedures to those sales processes.

We also recommend that the requirement for oral disclosures be waived for sales conducted entirely through the mail or through a combination of electronic media and the mail, as oral disclosures would be highly difficult if not impossible to provide in those circumstances.

7. Location of Insurance Sales.

Proposed Section .50(a) provides that insurance transactions must be physically segregated from areas where retail deposits are "routinely accepted from the general public." Bank One requests that this language be clarified to require the segregation of insurance activities from teller areas, which is where deposits are routinely taken. While deposits are occasionally taken in the "platform" area of a depository institution, employees in the platform area are primarily engaged in other activities, such as lending, general customer service, opening of new accounts, and the sale of insurance and brokerage products. We believe that this wider array of services will result in less likelihood of confusion between deposit and insurance transactions in the platform area. We also believe that such a distinction is consistent with the statute's use of the term "routine."

8. Examples of Disclosures.

Bank One requests that the Agencies include the following language in Section .40(b)(3) of the final rule as an example of language that would satisfy the disclosure requirement in Section

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40(a)(4) (which requires disclosure that an extension of credit may not be conditioned on either the consumer purchasing an insurance product from the depository institution or one of its affiliates or the consumer not purchasing an insurance product from an unaffiliated company):
“Not A Condition of Any Bank Loan or Product.”

Thank you for the opportunity to comment on this matter. If you have any questions concerning these comments, please contact Ken Terwilleger, at (614) 248-6694.

Very truly yours,



Kenneth J. Sperl
Senior Vice President
and Deputy General Counsel