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October 5, 2000

SENT VIA FACSIMILE TO (202)898-3838
Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429
Attn: Comments/OES

SENT VIA E-MAIL TO public.info@ots.treas.gov
Manager
Dissemination Branch
Information Management & Services Division
Office of Thrift Supervision
1700 G Street, N.W.
Washington, DC 20552
Attn: Docket No. 2000-68

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

Re: Comments Concerning Proposed Rule on Consumer Protections for Bank Sales of Insurance
RIN 3064-AC37

Dear Ms. Johnson & Gentlemen:

This comment letter concerns the Proposed Rule on Consumer Protections for Depository Institution Sales of Insurance published for comment in the Federal Register on August 21, 2000. I submit this letter on behalf of First Citizens BancShares, Inc. (a financial holding company) and its various direct and indirect subsidiaries, including First-Citizens Bank & Trust Company (a state-chartered nonmember bank), First Citizens Bank, A Virginia Corporation (a state-chartered nonmember bank) and Atlantic States Bank (a federal savings bank).

1. <u>Definition of "Consumer."</u> 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. The definition should not be expanded as proposed to include any individual "who obtains, applies to obtain, or is solicited to obtain insurance products or annuities from a covered person."

   Virtually all federal consumer protection regulations limit the definition of "consumer" to an individual who is engaged in a transaction for a personal, family or household purpose. It is important to maintain the consistency of this definition from regulation to regulation in order to simplify and reduce the costs of compliance. Requiring consumer protection disclosures in some (but not all) business, commercial and agricultural transactions will unnecessarily increase the cost and complexity of compliance.

2. <u>Anti-Tying Disclosures</u>. All of the disclosures described in Section .40(a) must be provided orally and in writing to a consumer pursuant to Section .40(b)(1)(i) before the completion of the initial sale of an insurance product or annuity to a consumer. Under the provisions of Section .40(b)(1)(ii), the anti-tying disclosures set forth in Section .40(a)(4) must be given orally and in writing at the time a consumer applies for an extension of credit in connection with which an insurance product or annuity will be solicited, offered, or sold. These two disclosure requirements are separate and distinct. Various technical requirements contained in Section .40(b) which make sense in the context of insurance disclosures given in connection with the initial purchase of an insurance product or annuity are problematic when applied to anti-tying disclosures given in connection with a credit application.

   As proposed, the regulation requires that we provide a consumer with oral and written anti-tying disclosures "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." If we take an application by telephone, we are permitted to mail the written anti-tying disclosures to the consumer within three business days. Other requirements contained in Section .40(b)(2)-(5) are troublesome in this context for the following reasons:

   a. Section .40(b)(2) allows the disclosures required by Section .40(a) to be given electronically. The disclosures required by Section .40(a) are the disclosures required in connection with the initial purchase of an insurance product or annuity. May the anti-tying disclosures required by Section .40(b)(1)(ii) be given electronically with the consumer's affirmative consent?

   b. Must the written disclosures be given in a form the consumer can keep? In many instances, a "paper" credit application is never generated or signed – the loan officer types into his or her computer the information the applicant provides to the loan officer during an oral interview or a telephone conversation. If the transaction is a simple closed-end consumer credit transaction which does not involve early truth-in-lending or RESPA disclosures, <u>no</u> disclosures are given to the consumer at the time of application. As proposed, the regulation will require written insurance disclosures to be given to the consumer if <u>any</u> insurance (for example, credit life insurance) is solicited in connection with the loan transaction. Does this make sense when the applicant may not receive any other document when the applicant applies for a loan?

c. How does a financial institution satisfy the requirement to provide the disclosures orally when the institution receives a credit application in the mail (for example, a credit card application which solicits credit life insurance)?

d. The requirement for written customer acknowledgment contained in Section .40(b)(5) makes no sense in the context of the limited disclosures required under Section .40(b)(1)(ii). Section 305 of the Gramm-Leach-Bliley Act should not be construed by the Agencies to require a financial institution to obtain (and presumably retain) a consumer acknowledgment that the required insurance disclosures were given in connection with a credit application. Why should a written acknowledgment be obtained when (i) the consumer does not have to sign a credit application, (ii) the transaction may not involve a written credit application, (iii) the credit application is denied, and/or (iv) the consumer does not purchase any insurance product in connection with the credit transaction. Indeed, if the proposed regulation is read literally, a lending institution which solicits and sells credit life insurance will need to obtain (and presumably retain) two customer acknowledgments – one for disclosures given with a credit application pursuant to Section .40(b)(1)(ii), and one for disclosures given at the time the insurance product is sold pursuant to Section .40(b)(1)(i).

Section 305 of the Gramm-Leach-Bliley Act gives the Agencies considerable latitude to adopt regulations consistent with the requirements of the Act and to make appropriate adjustments for alternative methods of purchase. The various requirements for the anti-tying disclosures contained in Section .40(b)(1)(ii) of the proposed rule should be reconsidered in light of the fact that the various requirements will apply even if no insurance is ever purchased. Imposing the same requirements which apply to disclosures given in connection with the initial purchase of an insurance product or annuity is both unnecessary and burdensome.

3. Consumer Acknowledgments. Section 305 of the Gramm-Leach-Bliley Act allows the Agencies to make necessary adjustments for purchases made in person, by telephone, or by electronic media. As proposed, the regulation does not make appropriate adjustments for telephone transactions. For example, assume a credit card application is taken over the telephone. The bank representative provides the consumer with all of the appropriate oral insurance disclosures and the consumer indicates that he wants the credit card account and credit life insurance. As drafted, the regulation permits us to send the consumer the written insurance disclosure within three business days. Presumably, we have satisfied the regulation. However, Section .40(b)(5) as written will require us to obtain a signed acknowledgment from the consumer at the time the consumer receives the written disclosures. This obviously cannot happen by telephone and it is unrealistic to expect that every consumer will return the signed acknowledgment. Cancellation of the insurance because the written confirmation has not been received is not a practical solution. The simple solution is to waive the acknowledgment requirement in the case of telephone transactions.

4. Types of Insurance. The proposed regulations do not adequately distinguish between "investment" insurance products (for example, variable rate annuities) and other types of insurance products (for example, title insurance, collision insurance or credit life insurance). Are all the disclosures necessary for all types of insurance products? Does it matter whether the insurance is being sold in a transaction totally unrelated to a credit transaction?

5. Electronic Media Sales. Section .40(b)(2)(ii) eliminates the oral disclosure requirement if the sale of an insurance product or annuity is conducted entirely through the use of electronic media and the disclosures are provided electronically. Why is it necessary to limit this rule to situations in which the sale is conducted "entirely" through the use of electronic media? What if a person calls the bank about insurance, learns of the website in the telephone call, and then hangs up before oral disclosures are given? What if the consumer mails a check in payment of the policy premium or the bank mails the policy to the consumer? Have we conducted part of the sale through means other than electronic media? The requirement that the sale be conducted "entirely" through the use of electronic media is far too restrictive and will render Section .40(b)(2)(ii) useless from a practical standpoint.

6. Telephone Credit Applications. Section .40(b)(1)(ii) requires us to mail the disclosures to a consumer when we take a credit application by telephone. May we not send the disclosures by electronic media if we obtain the consumer's "affirmative consent"? Why are we limited to regular mail?

7. Model Disclosures. The Agencies should prepare model disclosures which will include the anti-tying disclosures required by Section .40(a)(4).

Yours very truly,

James E. Creekman
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Raleigh, NC 27611
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JEC:cp

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