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Assurant Group℠

October 5, 2000

Attention: Manager, Dissemination Branch
Information Management & Services Division
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552

In re: Docket No. 2000-68

Dear Sir or Madam:

This letter is Assurant Group's written response to the Office of Thrift Supervision's (OTS) request for comments on its proposed regulations regarding consumer protections for depository institution sales of insurance. The principal business of Assurant Group's member companies involves the underwriting and administering of various insurance programs for a variety of financial institutions, including national and state banks, credit card issuers, retailers, mortgage and consumer finance companies.

Consequently, our comments are limited to credit insurance. We begin with some general observations and then respond to the OTS's specific questions, tracking the sections of the proposed regulations.

Credit Insurance Should be Exempted From the Proposed Regulations

It is Assurant Group's position that credit insurance should be exempted from the provisions of the proposed regulations. We recommend that either an express exemption be written into the proposed regulations, or the definition of insurance be amended to exclude credit insurance.

The Truth In Lending Act (TILA) and regulation Z already require consumer protection disclosures to be made in writing prior to the sale of credit insurance. We feel that applying the proposed disclosures and restrictions to credit insurance, in addition to the existing consumer protection disclosures, is redundant, costly and will most likely create more confusion for consumers than help them.

Credit insurance is not the type of product that could easily be mistaken for an insured deposit or investment vehicle. Therefore, the need for the new disclosures and restrictions is not there. By its very nature, credit insurance is linked to an extension of credit. Without it the insurance cannot be purchased. Consequently, credit insurance cannot be purchased at a teller window because loans are not made at the teller window. Therefore, the restrictions on where insurance can be sold are inapplicable.

Similarly, credit insurance has no residual cash value or investment component to it. Because the policy cannot be "cashed in" it would be extremely unlikely for an individual to mistakenly believe that it were an insured deposit or investment. Therefore, to require a disclosure stating that the insurance is not FDIC insured and contains investment risk would only tend to make a consumer wonder why the disclosures were being made and probably create confusion.

Laws, bulletins or guidelines addressing the sale of insurance in association with financial institutions is not a new concept. State governments have been wrestling with this issue and have developed, over time, similar procedures or policies addressing this issue. Some of these states limit the scope of their review to the sale of annuities or variable annuities by financial institutions, and those which are broader in scope exclude various forms of credit insurance (credit life, credit disability and/or credit involuntary unemployment insurance). See for example, New York Senate Bill 8090 that was signed by the Governor September 8, 2000; Florida Administrative Code Section 4-223-032 and 4-223-023; Vermont Bulletin 117 and 6; New Mexico Register 1467. A common thread throughout these state provisions is the exclusion of credit insurance coverages.

Mortgage insurance, which is similar to credit insurance, except for the type of loans underlying the loan involved, similarly should be not be subject to the proposed regulation.

Group Insurance Should be Exempted From the Proposed Regulations

Group and blanket life and disability insurance covering debtors, depositors, and customers of financial institutions should not be within the scope of the regulations. Additionally, travel accident insurance available to credit card holders of financial institutions should not be covered.

Such coverages are unlikely to be viewed as "investments" by the persons covered thereunder and traditionally, have not been subject to the abuses that the proposed regulations attempt to correct and preclude. Additionally, such coverages are generally understood by consumers and do not have cash values.

Definitions

Insurance

The proposed regulations do not define the term "insurance product." The preamble to the regulations indicates that the Agencies will look at a variety of sources, such as common usage, judicial interpretations and other *federal* laws, to determine whether a product is insurance.

The preamble does not say that the Agencies will look to state judicial interpretations and laws. If the Agencies do not, then it could result in the same product being treated differently depending on whether it is sold by a bank or not. For example, under Section 226.2(b)(3) of Regulation Z the definition of insurance is determined by state law. Therefore, it appears that a product may possibly be treated as insurance for Regulation Z purposes but not as insurance for purposes of the proposed regulations.

Additionally, numerous financial institutions sell membership programs and deposit "package" programs. These programs provide a number of benefits to the purchasers of the membership or package programs. Many of these membership and package programs contain relatively small ancillary insurance benefits. For example, a checking account package program will often contain a $10,000 accidental death and dismemberment benefit, along with several other bank and non-bank related benefits. Bank employees often sell these programs when an individual opens a depository account. The insurance components of these programs are relatively small in relation to the other benefits of the programs. At the very least, because of the mere collateral inclusion of low value insurance products in these programs, "package" and membership programs should not be included in the definition of an "insurance product" or at the very least, these types of transactions should be exempt from the physical separation rules contained in the proposed regulation.

Consumer

Comment is sought on whether the definition of consumer should be expanded to encompass all retail customers, including small businesses and whether to limit the definition of consumer to individuals who obtain or apply for insurance products primarily for personal, family, or household purposes.

We believe that consumer should not be defined to include all retail customers and should only include individuals who obtain or apply for insurance products primarily for personal, family, or household purposes. Retail businesses usually possess the financial sophistication that obviates the need to include them in the definition of consumer.

Covered Person/On Behalf Of

Comment is sought regarding the definition of covered person and on those activities that would cause a person to be considered to be acting on behalf of a bank. It is our suggestion that the mere receipt of referral fees or other compensation by a bank should not trigger the disclosures and restrictions contained in the proposed regulations. It is recommended that disclosures and other restrictions be triggered only by insurance sale activities that directly involve the customer, not by compensation arrangements between a bank and insurer.

In the group insurance context, it is not unusual for an insurance company to contact a person that qualifies as a group member under a group policy issued to a financial institution and indicate that the insurer is calling on behalf of the financial institution. Also, given the nature of group insurance products, it is not unusual for the corporate logo of the depository institution to be used in conjunction with marketing by the insurer of the group coverages, particularly since the insurer is required under state law to clearly identify itself as the underwriter of the insurance. Under these circumstances, the insurer would be pulled within the scope of the provision of the regulations (possibly despite McCarran-Ferguson) since it is deemed to be engaged in an activity "on behalf of" the depository institution. In addition, despite the hiring of telemarketers by an insurance company to enroll eligible persons under a group policy issued to a depository institution, such telemarketers could be viewed as being engaged in an activity "on behalf of" the depository institution.

We do not believe that this is the intent of the proposed regulations. As a result, we suggest that a covered person not include "the insurance company, a licensed insurance agent (other than an employee of a depository institution who is licensed as an insurance agent), or a person hired or retained by the insurer to contact a financial institution customer with regard to enrollment under a group policy issued to the financial institution. Also, employees of, or persons representing, a depository institution should be permitted to identify the availability and location of informational material or brochures and provide telephone numbers or other information to assist customers in contacting a licensed agent or the insurance company and should be permitted to refer customers to a licensed agent or insurer, and therefore should not fall within the definition of "covered persons."

Timing and Method of Disclosures

Direct Mail Should Be Exempted From Oral Disclosure Requirement

Assurant Group would also like to propose a clarification regarding disclosures made in connection with products sold on a direct mail basis. We believe the regulations, as currently drafted, are unclear and require both oral and written disclosures in direct mail transactions. Most individuals who purchase insurance on a direct mail basis have no contact with an institution or an insurer except through the mail. The insurance products are entirely marketed through the mail, most applications and enrollments are included in marketing materials and executed by a potential insured and delivered back to the insurer or financial institution by mail. Upon acceptance of the risk, insurance policies or certificates are delivered through the mail. The regulation, as currently drafted, does not seem to contemplate that there is never any individual contact with the insured in direct mail solicitations. Like electronic media, it is impossible to deliver the proposed disclosures on a written and oral basis in such a transaction and, thus, direct mail should be viewed in the same light as electronic media.

A large segment of the population does not have personal computers and chooses to purchase goods and services through direct mail. By not providing the same oral disclosure exemption to direct mail as is provided to electronic transactions, consumers without computers are being discriminated against because they will be precluded from purchasing insurance through the mail. Direct mail insurance transactions will cease to exist because of the oral disclosure requirement, and those individuals without telephones and personal computers who want insurance could find it much more difficult to purchase it.

Consumers purchase goods and services through all kinds of different distribution channels, direct mail, catalogue, internet, telephone, kiosk, and point-of-sale. Requiring oral disclosures on insurance transactions completed through the mail will eliminate direct mail insurance transactions. To arbitrarily place restrictions on one form of commerce (direct mail) that will result in the elimination of that form of commerce is unfair to the consumer and the industry affected.

We suggest that the OTS clarify that no oral disclosures are required when an insurance sale is effectuated through direct mail. The elimination of the oral disclosure requirement for direct mail closely reflects the proposal's treatment of transactions conducted electronically. No oral

disclosure is required when a transaction is conducted entirely through electronic means and that exemption should be extended to include direct mail business as well.

Consumer Acknowledgment

The Agencies request comment on whether the rules are flexible enough to permit future technological innovation. At the same time, the regulations appear to require a written consumer acknowledgment in a telephone solicitation situation.

It is impossible to obtain a written acknowledgment over the telephone and extremely difficult to get consumers to return acknowledgment forms. We suggest either exempting telephone solicitations from the written acknowledgment requirement or allow the audio taping of the disclosures being provided to serve as proof that the disclosures were given. A reasonable time period could be specified for maintaining the tapes on file.

Electronic Form of Disclosures

Comment is solicited on whether, and under what circumstances, additional disclosures should be required for sales or solicitations by electronic media in order to alleviate any potential confusion as to the identity or source of the insurance, such as a disclosure informing consumers when they are leaving the bank's website. Comment is also solicited on whether additional or alternative disclosures might be needed in instances where the bank acts as finder by electronic media.

It is recommended that the disclosures and restrictions not apply once the consumer leaves the bank's website, even if it links a consumer with a third party's or non-bank affiliate's website. Disclosures should not be triggered simply because a bank is acting as finder by providing links to other websites.

Where Insurance Activities May Take Place

The proposed regulations state that, to the extent practicable, a bank must keep the area where it *routinely* accepts *deposits* segregated from areas where the bank sells insurance. It is our suggestion that the OTS clarify that loan officers are not prohibited from selling credit insurance at their desks. We are asking the OTS to expressly state that despite the fact that loan officers may occasionally process a deposit, it does not qualify as a "routine" transaction that would prohibit the officer from selling credit insurance at his or her desk.

We would like to reserve the right to submit additional comments or amend these comments. Thank you for your time and thoughtful consideration of the issues involved. As always, if you have any questions or comments I can be reached at (305) 278-5602.

Sincerely,

Alexander G. Kolumbus
Compliance Counsel