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October 5, 2000

Communications Division
Office of the Comptroller of the Currency
250 E Street, SW
Third Floor
Washington, DC 20219
Attention: Docket No. 00-16

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th and C Streets, NW
Washington, DC 20551
Re: Docket R-1079

Robert E. Feldman, Executive Secretary
Attention: Comments/OES
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Manager, Dissemination Branch
Information Management & Services Division
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: Docket No. 2000-68

*Re: Consumer Protections for Depository Institution Sales of Insurance*

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)[1] is pleased to offer comments on the proposed consumer protection regulations for retail sales of insurance and annuities, as required by the Gramm-Leach-Bliley Act (GLB).

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[1] ICBA is the primary voice for the nation's community banks, representing nearly 5,300 institutions at nearly 16,200 locations nationwide. Community banks are independently owned and operated and are characterized by attention to customer service, lower fees and small business, agricultural and consumer lending. ICBA's members hold nearly $439

GLB added section 47 to the Federal Deposit Insurance Act. The law requires the federal banking agencies to publish, by November 12, consumer protection regulations for the retail sale, solicitation, advertising, or offer of insurance products by depository institutions. The joint agency proposal closely follows the detailed requirements set forth in the statute. The proposal is similar to the 1994 *Interagency Statement on Retail Sales of Non-Deposit Investment Products* that governs bank sales of securities, mutual funds and annuities.

The ICBA urges the agencies to focus the final rule on products that could be confused with investments or deposits and exclude other types of insurance. At a minimum, the disclosures should not apply to certain products, e.g., credit life and related products, debt cancellation contracts, crop and flood insurance. The final regulation should also make adequate provision for the many transactions that are not conducted face-to-face. Finally, to allow banks time to prepare for the new requirements, especially smaller institutions, the ICBA urges the agencies to defer the date for mandatory compliance for one year. Following are more detailed comments on these and other issues.

## Definitions

***On Behalf of the Bank.*** The proposal would apply to a bank or any person who sells, solicits, advertises or offers insurance products or annuities to a consumer at a bank office or "on behalf of" the bank. An insurance sale would be considered "on behalf of" the bank if the sale is represented as being on behalf of the bank, if commissions or fees from the sale benefit the bank, if documents involved in the sale represent the bank or use the bank name or logo, or if the sale takes place off bank premises but at a kiosk or similar location that uses the bank name or logo. The ICBA finds the proposed definition of what would be considered insurance sales "on behalf of" the bank to be acceptable.

***Consumer.*** The proposal uses the terms "customer" and "consumer" interchangeably. The ICBA urges the regulators to clearly define a consumer in the final rule. To be consistent with existing definitions of the term, it should be one who purchases insurance for "personal, family or household use." This would follow other consumer protection regulations, e.g., Regulation Z (Truth-in-Lending Act). Consistency in defining terms will help ease compliance. Absent some compelling reason for a distinct and unique definition, the ICBA recommends that the regulators use the existing definition of consumer.

Since the statute is intended as a *consumer* protection provision, the ICBA recommends that the final rule apply only to consumers and not be extended to commercial enterprises, i.e., small businesses and sole proprietors. The ICBA also recommends that the rule not apply to some commercial enterprises and not others. Making these distinctions would be unnecessarily burdensome -- and might invite

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billion in insured deposits, $526 billion in assets and more than $314 billion in loans for consumers, small businesses and farms in the communities they serve.

contention between examiners and bankers over differing interpretations of which commercial enterprises are covered and which are not. The most logical approach, and one that would be totally consistent with other regulations, would be to treat the final rule as a consumer protection statute applicable only to consumers.

***Insurance Product.*** Although the proposal does not include a definition of "insurance product," the agencies have asked whether the final rule should include one. The ICBA believes it would be helpful if the final rule defined insurance products that are covered by the rule. Defining that term will help make it clear when the disclosures must be made and should make compliance easier. A definition of insurance product will avoid discrepancies in interpretation between different agencies and between bankers and examiners. As banking and insurance companies combine under GLB, and as new products evolve in the market, it will be helpful to have guidance that bankers can refer to in determining when disclosures are appropriate.

The ICBA also recognizes that financial products and services are constantly evolving, including the area of insurance products. Therefore, the definition will need to be sufficiently flexible to cover or exclude new products and services as appropriate, and may have to be revised from time to time. To provide further guidance, the ICBA suggests including examples of covered insurance products with the final rule.

In crafting a definition of insurance, the agencies should consider the tenor of the statute and the intent of the legislation. As noted below, the statute clearly states that the disclosures should emphasize that the insurance product is not a deposit, and because of the nature of investments, it may lose value. These are directly mandated by the terms of the Gramm-Leach-Bliley Act. Therefore, the focus of the legislation is on insurance products that may be similar to a deposit or investment product and that a consumer might confuse with a deposit that is FDIC insured. This potential for confusion is not present with casualty and liability types of insurance, such as automobile insurance or homeowner's insurance, which are very dissimilar to annuities or other investment products. Therefore, disclosures to explain the distinction are unnecessary and could be confusing to the customer. The ICBA strongly recommends that any definition of insurance clearly exclude any products, such as hazard or liability insurance, that present no danger of being confused with a traditional bank deposit. This also would be in keeping with the *Interagency Statement on Retail Sales of Non-Deposit Investment Products,* on which these disclosures have been modeled.

However, should the agencies not define insurance to exclude non-investment type products, the ICBA recommends that at a minimum, credit life, debt cancellation contracts and crop and flood insurance be excluded.

***Credit Life.*** For many years, banks have offered customers special insurance to pay the remaining balance of a loan in the event of death or disability. These programs are generally referred to as credit life insurance. Because credit life insurance is integral to the underlying loan (a purely bank product), it has been treated differently from other types of insurance. The banking agencies also have developed a special set of regulations that

address credit life insurance.[2] For example, under the Federal Reserve's Regulation Z, Truth-in-Lending, the creditor must disclose in writing the premiums for credit life insurance and clearly indicate that it is an optional purchase, and the customer must acknowledge that disclosure.[3]

A similar concern is raised by debt cancellation contracts. Under Regulation Z, disclosures similar to those for credit life insurance must be made.[4] From the consumer's perspective, debt cancellation contracts have the same effect as credit life insurance -- the outstanding balance of a loan is extinguished upon the occurrence of a specific event such as death or disability. However, the key distinction is that, unlike credit life insurance where a third-party makes the payment upon the occurrence of the triggering event, the debt cancellation contract is a part of the contractual lending arrangement between the creditor and the debtor and does not involve a third-party. The agreement becomes an optional addendum to the loan contract. At a minimum, for debt cancellation contracts, a statement that the product is not guaranteed by the bank is erroneous.

Perhaps most significant is how credit life and debt cancellation products are sold. Consumers are not primarily making an insurance purchase, they are borrowing funds. The credit life insurance or debt cancellation contract is an enhancement to the loan product, an option that can be accepted or declined. Disclosures required under existing law and regulations clearly explain this and the costs involved. Both credit life insurance and debt cancellation contracts are uniquely related to the underlying credit, i.e., both are integral options related to a bank product.

Inasmuch as both are already subject to regulation and supervision, the ICBA urges the agencies to exclude credit life insurance and debt cancellation contracts from these new disclosure requirements.

***Crop Insurance and Flood Insurance.*** Another unique situation is presented by crop insurance and flood insurance. These products should also be excluded from the new disclosure requirements, although for a different reason.

The flood insurance program is a program created by the federal government which requires lenders to take certain steps to ensure that borrowers purchase flood insurance when appropriate. The insurance is provided by the federal government. Crop insurance is also a federal program. While the actual insurance is offered by independent providers, it is backed by the federal government. The government crop insurance programs also help reduce borrower premiums.

Under the proposed disclosure rules, banks would be required to state that the insurance is "not guaranteed by any government agency." And yet, such a statement would be incorrect for both flood and crop insurance, which are *both* supported by federal

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[2] See, e.g., Federal Reserve STAFF OP. of April 22, 1982 that prohibits bank employees from receiving fees from the sale of credit life insurance. See also 12 CFR 202.7(e).
[3] 12 CFR 226.4(d)(1).
[4] 12 CFR 226.4(d)(2).

government agencies. Therefore, the ICBA urges the agencies exclude these products as well.

## Disclosures

Banks selling insurance would be required to make both oral and written disclosures about the nature of the insurance or annuity product, and the customer would have to sign an acknowledgment verifying receipt of the disclosures. The disclosures must state that:

- the insurance product is not a deposit and is not guaranteed by the bank or its affiliates
- the insurance product is not insured by the FDIC or any other federal agency
- where applicable, purchase of the insurance product may involve investment risk and possible loss of value
- where an insurance sale is connected to a loan, the credit decision is not conditioned on whether the consumer purchases the insurance from the bank or an affiliate (or agrees not to obtain insurance from an unaffiliated entity)

***Format.*** The proposal would require that disclosures be "conspicuous, simple, direct, readily understandable, designed to call attention to the information, and meaningful." For example, one way to do so would be using the following example (essentially as specified in the statute):

- "NOT A DEPOSIT
- "NOT FDIC-INSURED
- "NOT INSURED BY ANY GOVERNMENT AGENCY
- "NOT GUARANTEED BY THE BANK
- "MAY GO DOWN IN VALUE"

It would not be considered a meaningful disclosure for the bank to inform the customer that the disclosures are available on request.

The ICBA believes that it would be helpful if the regulators offered guidance, perhaps in an appendix to the final rule, on the types of mechanisms banks could use to call attention to the disclosures. While it is neither necessary nor desirable that the regulators specify a *required* format, it would be useful for banks to have some guidance on what is deemed acceptable. Such guidance should serve as a safe harbor, much as model disclosures do in other instances, i.e., if a bank chose to use the model, it would automatically be deemed in compliance, while still allowing banks flexibility to adapt the disclosure requirements to their own particular needs and circumstances.

***Sales Not in Person.*** There are many transactions that are not conducted face-to-face. While the proposal takes some of these into account, the ICBA urges the agencies to be mindful of the many situations that involve transactions that are not conducted in a face-to-face setting.

For example, if insurance is sold by a mailed offering, requiring oral disclosures makes little sense. Second, if the transaction is conducted over the telephone, the need to obtain a consumer's written acknowledgement will be unduly burdensome and frustrating for all parties involved; the bank should only be required to make oral disclosure and mail written disclosures to the customer.

***Electronic Disclosures.*** Recently, President Clinton signed legislation that would give legal sanction to agreements formed electronically and to electronic records, the E-Sign Act. The act upholds the legal effect of contracts in electronic format, as well as providing that disclosures may be made electronically as long as consumers affirmatively agree and verify that they can receive disclosures electronically. The ICBA believes that the final rule on insurance disclosures should verify that electronic disclosures that conform to the requirements of this legislation are acceptable.

The agencies have also asked whether it is necessary to offer additional guidance for disclosures made through electronic media, along the lines of those offered by the Federal Trade Commission (FTC) regarding on-line advertisements that specify placement, repetition, duration and so forth. The ICBA does not believe that such detail is needed at this time (although sample disclosures, as discussed above, would be helpful).

The ICBA does not believe it necessary to require disclosures if the bank has a Web site that only provides a link to an unaffiliated insurance company's Web site. Provided it is clear that the insurance site is separate from the bank's Web site, offering the service of a link for customer convenience should not require the burden of disclosures. Some might argue that the link falls within the ambit of offering insurance "on behalf of" the bank, however the mere existence of a link is too tenuous a connection. Should the disclosures be required merely for posting a link, banks may decide that the cost of compliance far outweighs any minimal benefit to the bank, and the links may be eliminated, negatively impacting customer convenience. It should be sufficient for the bank to disclose that the customer is leaving the bank's Web site.[5]

The ICBA finds that the detail presented in the proposal should generally be sufficient to allow for changes in technology. As with many regulations, changing technologies may require revisions as technology develops, but it is important to be mindful that the more detailed and specific the final rule is regarding format, the less flexible the final rule will be to adapt to new technologies.

## Effective Date

Finally, the ICBA urges the agencies to allow banks sufficient time to adapt to the new rules and to establish policies and procedures for compliance. Given the many other regulatory developments and requirements resulting from the enactment of GLB, the ICBA

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[5] If the bank receives some form of compensation for the sale of insurance that results from the link, that would be covered under other provisions regarding sales "on behalf of" the bank and would require disclosure. But, the mere existence of a link should not be enough to trigger the disclosures.

recommends that the regulators allow up to one year from the time the rules become final before compliance with these disclosures is mandatory.

Thank you for the opportunity to comment.

Sincerely,

Thomas J. Sheehan
President