

## REGULATORY QUESTIONS AND ANSWERS

1. **Federal Consumer Protection Regulations**
2. **State Activities on Privacy**

**March 29, 2001**

ABI has had several questions from the membership about the federal consumer protection regulations as well as the privacy regulations being developed in the states. This summary provides answers to those questions.

By way of background, the effective date for the federal consumer protection regulations has been extended to October 1, 2001. With respect to the consumer protection regulations issued by the Office of the Comptroller of the Currency, they apply to the retail sale, solicitation and advertising of certain types of insurance and annuity products offered to a consumer at an office of the national bank or "on behalf of the bank." The phrase "on behalf of the bank" is defined to include the use of documents that refer to the name of the bank and certain referral arrangements. Insurance transactions to which the regulations apply must satisfy certain disclosure obligations and separation requirements, among other requirements.

Concerning state activities related to privacy, several states have been considering legislation and proposed regulations based on models developed by the National Conference of Insurance Legislators and the National Association of Insurance Commissioners. Generally speaking, both models contain financial privacy requirements similar to the federal privacy regulations. Unlike the federal privacy regulations, each model also contains a section governing health information privacy. The compliance date for the federal privacy provisions and most state requirements is July 1, 2001.

### **Consumer protection regulations**

This section responds to several questions concerning regulations recently issued by the Office of the Comptroller of the Currency entitled Consumer Protections for Depository Institution Sales of Insurance ("the Consumer Protection Regulations").<sup>1</sup>

*Question 1:* What types of insurance products are covered by the Consumer Protection Regulations?

*Answer:* The regulations govern the sale of insurance products and annuities by a bank (or someone acting on the bank's behalf) if the insurance (or annuity) is sold to an individual for personal, family, or household purposes. Other

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<sup>1</sup> 65 Federal Register 75,822 (Dec. 4, 2000), adding 12 C.F.R. Part 14.

Insurance products are not covered, such as “force placed” insurance and title insurance, to the extent it is purchased to protect the lender.

*Question 2:* The regulations provide for both detailed disclosures and short form disclosures. When may (must) each type of disclosure be given? What must be included in the disclosure? Must the name of the bank be included?

*Answer:* The regulations speak about both *detailed disclosures* and *short form disclosures*

### Detailed disclosures

There are two types of detailed disclosures that must be given: *insurance disclosures*, which must always be given; and *credit disclosures*, which must be given when the sale is related to an extension of credit.

The regulations provide very little flexibility as to the contents of the detailed disclosures, other than that they be accurate (see 12 C.F.R. § 14.40). The following is sample language that is taken almost verbatim from the regulations:

#### **Insurance disclosures**

- **The insurance product [or annuity] is not a deposit or other obligation of, or guaranteed by, the bank or an affiliate of the bank.**
- **The insurance product [or annuity] is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the bank, or (if applicable) an affiliate of the bank.**
- **[if applicable] The insurance product [or annuity] involves investment risk, including the possible loss of value.**

*Insurance disclosures* must be given orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer.

*Exception for transactions by mail:* If the sale of an insurance product or annuity is conducted by mail, oral disclosures are not required to be given.

*Exception for transactions by telephone:* If a sale of an insurance product or annuity is conducted by telephone, the written disclosure must be given by mail within three days beginning on the first business day after the sale, excluding Sundays and certain legal public holidays.<sup>2</sup>

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<sup>2</sup> Refer to 5 U.S.C. § 6103(a) for a listing of legal holidays.

## Credit disclosures

- **The bank may not condition its approval of an extension of credit on your purchase of an insurance product or annuity from the bank or any of its affiliates.**
- **The bank may not condition its approval of an extension of credit on your agreement not to obtain, or a prohibition on your obtaining, an insurance product or annuity from an entity not affiliated with the bank.**

*Credit disclosures* must be given orally and in writing at the time the consumer applies for an extension of credit connected to the sale or solicitation of an insurance product or annuity.

*Exception for transactions by mail:* If the bank takes an application for credit by mail, an oral disclosure is not required.

*Exception for transactions by telephone:* If the bank takes an application for credit by telephone, the written disclosures must be provided within three days beginning the first business day after the application is taken, excluding Sundays and certain legal public holidays.<sup>3</sup>

For both the insurance disclosures and the credit disclosures, the name of the bank does not have to be included in the disclosures if it is otherwise noted in the materials containing the disclosures.

## Electronic form of disclosures

If certain requirements are met,<sup>4</sup> the insurance disclosures and the credit disclosures may also be given in electronic form. If given electronically, they do not have to be given orally.

## Short form disclosures

The *insurance* disclosures also must be included in advertisements and promotional materials for insurance products or annuities unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the bank. Where required for advertisements and promotional materials, short form disclosures may be used. The regulations list several media for which short form disclosures are appropriate. They include visual media, such as television broadcasts, ATM screens, billboards, signs, and posters, and in written advertisements and

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<sup>3</sup> Refer to 5 U.S.C. § 6103(a) for a listing of legal holidays.

<sup>4</sup> Refer to the requirements listed in the Electronic Signatures in Global and National Commerce Act (12 U.S.C. § 7001(c)) and 12 C.F.R. § 14.40(c)(4).

promotional materials, such as brochures. The following are acceptable short form insurance disclosures:

- NOT A DEPOSIT
- NOT FDIC-INSURED
- NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY
- NOT GUARANTEED BY THE BANK
- MAY GO DOWN IN VALUE [if applicable]

Note that there are no short form *credit* disclosures.

*Question 3:* For those who plan to sell insurance in several states, please provide a list of state laws that have disclosure requirements.

*Answer:* ABI is aware of the following state laws, regulations and interpretive rulings that set forth consumer protection requirements for insurance and annuity sales in the states listed. Bank legal counsel should review the requirements in each state for the most up-to-date requirements. Some states have requirements that are more burdensome than those of the federal consumer protection regulations.

<u>State</u>	<u>Law/Regulation/Guidance/Interpretation</u>
Arkansas	23-66-606
Colorado	10-2-603; 10-2-604; 10-2-605
Connecticut	38a-775
Delaware	5 § 930
Florida	626.9551 Admin. Code 4-223.023 (annuities only) Admin. Code 4-223.032 (advertisements)
Georgia	Banking Regulation 80-5-04-.07, 08 Insurance Regulation 12-2-76-.15 Regs. 120-2-76-.10; 120-2-71.10
Hawaii	412:5-205.6(b)
Illinois	215 ILCS 5/1409
Indiana	28-1-11-2.6
Kansas	Bank Commissioner Memo 1996-8B
Kentucky	304.9-135(1)(2)(e)
Louisiana	22:3059 Admin. Code tit. 10 § 351.E.3 La. Ins. Bull. (Feb. 20, 1997)

<u>State</u>	<u>Law/Regulation/Guidance/Interpretation</u>
Maine	9-B, § 448.3 9-B, § 242.4 9-B, § 443.11 (annuities)
Maryland	Ins. Comm. Ltr./ Comm. Of Fin. Reg. Ltr. Oct. 31,
1996	
Massachusetts	Ch. 167F, sec. 2A(b)(6) Regs. 209 § 49.06(7); 211 § 142.06(6)
Michigan	500.1243(16)-(18)
Mississippi	Insurance Regulation No. 98-3, sec. 11
New Hampshire	406-C:8; 406-C:7 N.H. Code Admin. R. Ins. 3204.02; 3204.07; 3204.09(b), (f) N.H. Code Admin. R. Ban. 520.02(c)(j)-(k)
New Jersey	Admin. Code tit. 11, § 11:17A-2.5(a)2
New Mexico	59A-12-10(H)-(I)
New York	NY Bank 14-g(6) Regs. Tit. 3, § 6.3(f)(1)
Oregon	707.310(2)(e) § 708A.005(2)(e)
Pennsylvania	40 Pa. Stat. § 277.1(a)-(c) Insurance Dept. Policy Statement (Selling Insurance and Annuities)
Rhode Island	27-58-7; Dept. of Business Regulation 90, sec. 5 R.I. Regs. R27-90-005(b)
Tennessee	§ 56-8-106(b)
Texas	Art. 21.21-9, Sec. 3
Utah	§ 31A-23-316
Vermont	Vt. Ins. Div. Bull. No. 117.
Virginia	Va. St. § 38.2-604
West Virginia	§ 33-11A-9
Wisconsin	Banking Letter No. 38A (annuities only)
Wyoming	Dept. of Audit Ch. 16, § 10; § 6.

### **Privacy regulations**

This section responds to several questions concerning the federal privacy regulations and the state privacy models drafted by the National Conference of Insurance Legislators and the National Association of Insurance Commissioners.

*Question 1:* Who enforces the privacy regulations with respect to a national bank that is licensed as an insurance agent as opposed to a bank subsidiary that is licensed?

*Answer:* If the licensee is the bank itself, the Office of the Comptroller of the Currency enforces the privacy regulations. If the agency is a subsidiary of the bank, the state insurance regulator in the state where insurance products are sold would have the enforcement authority.

*Question 2:* If a bank customer is also a customer of an insurance agency that is a subsidiary of the bank, is it permissible to provide customers of both affiliates with a single privacy notice?

*Answer:* Yes, as long as the notice is accurate with respect to both affiliates and all of the products offered. If an individual has a bank account with a bank and purchases insurance through the bank's insurance agency subsidiary, the individual would be considered to be a "customer" of both the bank and the agency. Accordingly, both entities would have to satisfy the notice requirements. To avoid duplicate notices, a bank may prefer to provide its customers with a blanket privacy notice, anticipating that in the future, the customer will also be a customer of the insurance agency.

*Question 3:* In the insurance context, does an insurance agent (agency) have to provide the privacy notice if the insurance company also provides the privacy notice?

*Answer:* No, as long as the agency does not disclose any nonpublic personal information to a person other than the insurance company or its affiliates.