AMERICAN BANKERS INSURANCE ASSOCIATION
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Public Information Room
Office of the Comptroller of the Currency
250 E Street, S.W., Mailstop 1-5
Washington, D.C. 0418
Attention: Docket No. 0418

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429
Attention: EGRPRA Burden Reduction Comment

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551
Attention: Docket No. R-1206

Regulation Comments
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552
Attention: Docket No. 2004-35

Re: EGRPRA Review Of Consumer Protection: Account/Deposit Relationships And Miscellaneous Rules

Dear Sir or Madam:

The American Bankers Insurance Association[1] appreciates the opportunity to comment on the compliance burdens associated with the insurance sales disclosure and consumer protection regulation promulgated by the federal banking agencies in response to Section 305 of the Gramm-Leach-Bliley Act.[2]

[1] The American Bankers Insurance Association is a separately chartered trade association and non-profit affiliate of the American Bankers Association. ABIA's mission is to serve as a forum for long-term national strategy among banking organizations on insurance matters, to propose legislation and regulations that permit banking organizations to participate fully in the business of insurance, to protect all existing insurance powers of banking organizations, and to monitor insurance developments at the state level with the support of the nationwide network of state banking associations.

[2] The insurance sales and consumer protection regulation has been codified at 12 C.F.R. Part 14 (national banks); 12 C.F.R. Part 208 (state member banks); 12 C.F.R. Part 343 (state non-member banks); and 12 C.F.R. Part 536 (savings associations). Section 305 of the Gramm-Leach-Bliley Act added a new Section 47 to the Federal Deposit Insurance Act, which may be found at 12 U.S.C. 1831x.

Introduction

As a threshold matter, we wish to commend the federal banking agencies for the manner in which the insurance sales disclosure and consumer protection regulation was promulgated. In particular, the federal banking agencies delayed the effective date of the regulation at the request of ABIA in order to give depository institutions adequate time to prepare for compliance. Additionally, the federal banking agencies responded to a series of questions posed by ABIA regarding the operation of the regulation, and even issued further clarification regarding the application of the regulation to renewals. These actions significantly facilitated our understanding of, and our compliance with, the regulation.

On the other hand, as we noted in our comment letter on the proposed regulation, we believe that the federal banking agencies should narrow the scope of the regulation by excepting certain insurance products from the disclosure requirements imposed by the regulation. Such a revision not only would ensure that the regulation is targeted to insurance products with the potential for consumer confusion, but actually would reduce the potential for consumer confusion, and would reduce the compliance burden imposed on depository institutions.

Our Proposal

Insurance Products That Lack Investment Features Should Be Excluded From The Disclosure Requirements Imposed By The Regulation

The term "insurance" is not defined in Section 305 of GLBA or the insurance sales disclosure and consumer protection regulation. Instead, the federal banking agencies have decided to look to conventional definitions, judicial interpretations and other federal laws to determine what is or is not an insurance product. The practical effect of this decision is that the regulation applies to a wide range of insurance products, even those that present little, if any, potential for consumer confusion with deposit or savings products.

ABIA acknowledges that it is difficult to define the term insurance. Therefore, we do not advocate the inclusion of a specific definition of the term in the regulation. However, we do propose that the regulation be modified to provide that certain products are NOT insurance for purposes of the disclosure requirements imposed by the regulation. Since it is generally recognized that a regulatory agency responsible for implementing a statute may define an undefined term, it is clear that the federal banking agencies have the power to determine what is NOT insurance for purposes of the disclosure requirements.

More specifically, we propose that the federal banking agencies determine that the disclosure requirements do not apply to insurance products that present little, if any, potential for consumer confusion.[3] The legislative history

[3] The regulation requires institutions to provide consumers with written and oral insurance disclosures and credit disclosures, and to obtain an acknowledgment of these disclosures. These requirements appear in 12 C.F.R. Part 14.40 (national banks); 12 C.F.R. Part 208.84 (state member banks); 12 C.F.R. Part 343.40 (state non-member banks); and 12 C.F.R. Part 536.40 (savings associations).

accompanying Section 305 of GLBA indicates that many of the provisions in the section were based upon the Interagency Statement on Retail Sales of Nondeposit Investment Products.[4] That Statement was issued to help consumers distinguish between deposit products and non-deposit investment products, such as annuities and mutual funds. It is, however, difficult to imagine a situation in which a consumer could confuse products such as credit insurance, property and casualty insurance, long-term health care insurance, employee benefit products, and term life insurance with savings and deposit products. Such forms of insurance have no principal and interest features. They require a consumer to pay a fee, or premium, in exchange for some monetary benefit in the event of a specified occurrence. Therefore, providing the disclosure statements to consumers in connection with the sale of these forms of insurance actually may cause consumer confusion, and definitely adds to the compliance burden of depository institutions.

Credit Insurance

Credit insurance, in particular, does not have the characteristics of a deposit product or an investment product.[5] Deposit and investment products involve the placement of a sum of money by a consumer with an institution in exchange for a certificate or some security that promises a rate of return on the funds, or has the potential for earning some return. In contrast, credit insurance involves the payment of a fee by a borrower in exchange for a promise by an insurance company to pay off the balance of a loan in the event a borrower dies or becomes disabled. Credit insurance, therefore, cannot be confused easily with a deposit or investment product.

Additionally, lenders already provide consumers a disclosure in connection with credit insurance sales. Regulation Z, which implements the Truth-in-Lending Act (TILA), provides that the cost of credit insurance may be excluded from the required TILA disclosure if a lender separately discloses to the consumer that the insurance coverage is not required, provides the consumer with information about the cost of the insurance, and obtains an affirmative written request from the consumer to purchase the insurance. This existing TILA disclosure ensures that consumers are fully aware of the nature and terms of credit insurance.

Fixed Rate Annuities

We also recommend that the regulation be modified to exclude fixed rate annuities from the investment risk disclosure.[6] Again, neither Section 305 nor the regulation defines what constitutes an "investment risk." In the context of insurance, however, the term has been defined to be "the possibility of a reduction

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[4] The Report accompanying the House version of Section 305 notes that "...Many of the provisions of this section are based on the Interagency Statement on Retail Sales of Non-deposit Products...." House Report 106-74, Part I, 106th Congress, 1st Session, page 143.

[5] We define credit-related insurance to include credit life, health, accident or disability insurance and credit unemployment insurance.

[6] 12 C.F.R. Part 14.40(a)(3) (national banks); 12 C.F.R. Part 536.40(a)(3) (savings associations); 12 C.F.R. Part 343.40(a)(3) (state non-member banks); and 12 C.F.R. Part 208.84(a)(3) (state member banks).

in value of an insurance instrument resulting from a decrease in the value of the assets incorporated in the investment portfolio underlying the insurance instrument."[7] Fixed rate annuities present no such risk to a policyholder. A fixed-rate annuity is a contract between a policymaker and an insurer that requires a policyholder to pay either a lump sum or periodic payments to the insurer to establish the principal upon which the insurer guarantees the policyholder a fixed rate of return. In other words, with a fixed rate annuity, a policyholder faces no possibility of a reduction in the value of the contract; the return to the policyholder is guaranteed. The investment risk, if any, rests with the insurance company, which issues the guarantee. Therefore, making the investment risk disclosure to consumers can be confusing and misleading as to the actual type of risk associated with a fixed rate annuity. Furthermore, should an insurance company become insolvent, state guaranty funds would step in to protect annuity policies up to a certain amount (as much as $400,000 for individuals).

Additionally, when Section 305 was enacted, Congress clearly signaled that the investment risk disclosure was required only in connection with variable annuities, not fixed annuities. The relevant part of Section 305 reads as follows:

> (A) IN GENERAL. – Requirements that the following disclosures be made orally and in writing before the completion of the initial sale …
>
> (i) UNINSURED STATUS. – ….
>
> (ii) INVESTMENT RISK. – *In the case of a variable annuity* or other insurance product which involves an investment risk, that there is an investment risk associated with the product, including possible loss of value. … (emphasis added)

Clearly, if Congress intended the disclosure to apply to fixed rate annuities, it would have said so. Since it did not, the federal banking agencies should not require the investment risk disclosure in connection with fixed rate annuities.

A more detail discussion of this issue is contained in the attached brief, which ABIA submitted to the federal banking agencies on April 16, 2002.

Conclusion

ABIA appreciates the opportunity to propose the exclusion of certain insurance products from the disclosure requirements imposed by the insurance sales disclosure and consumer protection regulation. We believe such an exclusion is not only consistent with the intent of the regulation, but also will reduce consumer confusion and the compliance burden on depository institutions.

Sincerely,

Beth Climo
Executive Director

[7] Barron's Dictionary of Insurance Terms.