

TITLE 12 - BANKS AND BANKING
CHAPTER 16 - FEDERAL DEPOSIT INSURANCE CORPORATION

§ 1831x. Insurance customer protections

(a) Regulations required

(1) In general

The Federal banking agencies shall prescribe and publish in final form, before the end of the 1-year period beginning on November 12, 1999, customer protection regulations (which the agencies jointly determine to be appropriate) that—

(A) apply to retail sales practices, solicitations, advertising, or offers of any insurance product by any depository institution or any person that is engaged in such activities at an office of the institution or on behalf of the institution; and

(B) are consistent with the requirements of this chapter and provide such additional protections for customers to whom such sales, solicitations, advertising, or offers are directed.

(2) Applicability to subsidiaries

The regulations prescribed pursuant to paragraph (1) shall extend such protections to any subsidiary of a depository institution, as deemed appropriate by the regulators referred to in paragraph (3), where such extension is determined to be necessary to ensure the consumer protections provided by this section.

(3) Consultation and joint regulations

The Federal banking agencies shall consult with each other and prescribe joint regulations pursuant to paragraph (1), after consultation with the State insurance regulators, as appropriate.

(b) Sales practices

The regulations prescribed pursuant to subsection (a) of this section shall include antitying and anticoercion rules applicable to the sale of insurance products that prohibit a depository institution from engaging in any practice that would lead a customer to believe an extension of credit, in violation of section 1972 of this title, is conditional upon—

(1) the purchase of an insurance product from the institution or any of its affiliates; or

(2) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

(c) Disclosures and advertising

The regulations prescribed pursuant to subsection (a) of this section shall include the following provisions relating to disclosures and advertising in connection with the initial purchase of an insurance product:

(1) Disclosures

(A) In general

Requirements that the following disclosures be made orally and in writing before the completion of the initial sale and, in the case of clause (iii), at the time of application for an extension of credit:

(i) Uninsured status

As appropriate, the product is not insured by the Federal Deposit Insurance Corporation, the United States Government, or the depository institution.

(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.

(iii) Coercion

The approval of an extension of credit may not be conditioned on—

- (I)** the purchase of an insurance product from the institution in which the application for credit is pending or of any affiliate of the institution; or
- (II)** an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

(B) Making disclosure readily understandable

Regulations prescribed under subparagraph (A) shall encourage the use of disclosure that is conspicuous, simple, direct, and readily understandable, such as the following:

- (i)** “NOT FDIC—INSURED”.
- (ii)** “NOT GUARANTEED BY THE BANK”.
- (iii)** “MAY GO DOWN IN VALUE”.
- (iv)** “NOT INSURED BY ANY GOVERNMENT AGENCY”.

(C) Limitation

Nothing in this paragraph requires the inclusion of the foregoing disclosures in advertisements of a general nature describing or listing the services or products offered by an institution.

(D) Meaningful disclosures

Disclosures shall not be considered to be meaningfully provided under this paragraph if the institution or its representative states that disclosures required by this subsection were available to the customer in printed material available for distribution, where such printed material is not provided and such information is not orally disclosed to the customer.

(E) Adjustments for alternative methods of purchase

In prescribing the requirements under subparagraphs (A) and (F), necessary adjustments shall be made for purchase in person, by telephone, or by electronic media to provide for the most appropriate and complete form of disclosure and acknowledgments.

(F) Consumer acknowledgment

A requirement that a depository institution shall require any person selling an insurance product at any office of, or on behalf of, the institution to obtain, at the time a consumer receives the disclosures required under this paragraph or at the time of the initial purchase by the consumer of such product, an acknowledgment by such consumer of the receipt of the disclosure required under this subsection with respect to such product.

(2) Prohibition on misrepresentations

A prohibition on any practice, or any advertising, at any office of, or on behalf of, the depository institution, or any subsidiary, as appropriate, that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to—

- (A)** the uninsured nature of any insurance product sold, or offered for sale, by the institution or any subsidiary of the institution;
- (B)** in the case of a variable annuity or insurance product that involves an investment risk, the investment risk associated with any such product; or
- (C)** in the case of an institution or subsidiary at which insurance products are sold or offered for sale, the fact that—

- (i) the approval of an extension of credit to a customer by the institution or subsidiary may not be conditioned on the purchase of an insurance product by such customer from the institution or subsidiary; and
- (ii) the customer is free to purchase the insurance product from another source.

(d) Separation of banking and nonbanking activities

(1) Regulations required

The regulations prescribed pursuant to subsection (a) of this section shall include such provisions as the Federal banking agencies consider appropriate to ensure that the routine acceptance of deposits is kept, to the extent practicable, physically segregated from insurance product activity.

(2) Requirements

Regulations prescribed pursuant to paragraph (1) shall include the following requirements:

(A) Separate setting

A clear delineation of the setting in which, and the circumstances under which, transactions involving insurance products should be conducted in a location physically segregated from an area where retail deposits are routinely accepted.

(B) Referrals

Standards that permit any person accepting deposits from the public in an area where such transactions are routinely conducted in a depository institution to refer a customer who seeks to purchase any insurance product to a qualified person who sells such product, only if the person making the referral receives no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

(C) Qualification and licensing requirements

Standards prohibiting any depository institution from permitting any person to sell or offer for sale any insurance product in any part of any office of the institution, or on behalf of the institution, unless such person is appropriately qualified and licensed.

(e) Domestic violence discrimination prohibition

(1) In general

In the case of an applicant for, or an insured under, any insurance product described in paragraph (2), the status of the applicant or insured as a victim of domestic violence, or as a provider of services to victims of domestic violence, shall not be considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of insurance policies, or payment of insurance claims, except as required or expressly permitted under State law.

(2) Scope of application

The prohibition contained in paragraph (1) shall apply to any life or health insurance product which is sold or offered for sale, as principal, agent, or broker, by any depository institution or any person who is engaged in such activities at an office of the institution or on behalf of the institution.

(3) Domestic violence defined

For purposes of this subsection, the term “domestic violence” means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

- (A) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault.
- (B) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm.
- (C) Subjecting another person to false imprisonment.

(D) Attempting to cause or cause damage to property so as to intimidate or attempt to control the behavior of another person.

(f) Consumer grievance process

The Federal banking agencies shall jointly establish a consumer complaint mechanism, for receiving and expeditiously addressing consumer complaints alleging a violation of regulations issued under the section, which shall—

- (1) establish a group within each regulatory agency to receive such complaints;
- (2) develop procedures for investigating such complaints;
- (3) develop procedures for informing consumers of rights they may have in connection with such complaints; and
- (4) develop procedures for addressing concerns raised by such complaints, as appropriate, including procedures for the recovery of losses to the extent appropriate.

(g) Effect on other authority

(1) In general

No provision of this section shall be construed as granting, limiting, or otherwise affecting—

- (A) any authority of the Securities and Exchange Commission, any self-regulatory organization, the Municipal Securities Rulemaking Board, or the Secretary of the Treasury under any Federal securities law; or
- (B) except as provided in paragraph (2), any authority of any State insurance commission (or any agency or office performing like functions), or of any State securities commission (or any agency or office performing like functions), or other State authority under any State law.

(2) Coordination with State law

(A) In general

Except as provided in subparagraph (B), insurance customer protection regulations prescribed by a Federal banking agency under this section shall not apply to retail sales, solicitations, advertising, or offers of any insurance product by any depository institution or to any person who is engaged in such activities at an office of such institution or on behalf of the institution, in a State where the State has in effect statutes, regulations, orders, or interpretations, that are inconsistent with or contrary to the regulations prescribed by the Federal banking agencies.

(B) Preemption

(i) In general

If, with respect to any provision of the regulations prescribed under this section, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Board of Directors of the Corporation determine jointly that the protection afforded by such provision for customers is greater than the protection provided by a comparable provision of the statutes, regulations, orders, or interpretations referred to in subparagraph (A) of any State, the appropriate State regulatory authority shall be notified of such determination in writing.

(ii) Considerations

Before making a final determination under clause (i), the Federal agencies referred to in clause (i) shall give appropriate consideration to comments submitted by the appropriate State regulatory authorities relating to the level of protection afforded to consumers under State law.

(iii) Federal preemption and ability of States to override Federal preemption

If the Federal agencies referred to in clause (i) jointly determine that any provision of the regulations prescribed under this section affords greater protections than a comparable

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

State law, rule, regulation, order, or interpretation, those agencies shall send a written preemption notice to the appropriate State regulatory authority to notify the State that the Federal provision will preempt the State provision and will become applicable unless, not later than 3 years after the date of such notice, the State adopts legislation to override such preemption.

(h) Non-discrimination against non-affiliated agents

The Federal banking agencies shall ensure that the regulations prescribed pursuant to subsection (a) of this section shall not have the effect of discriminating, either intentionally or unintentionally, against any person engaged in insurance sales or solicitations that is not affiliated with a depository institution.

(Sept. 21, 1950, ch. 967, § 2[47], as added Pub. L. 106–102, title III, § 305, Nov. 12, 1999, 113 Stat. 1410.)