Retail Insurance Sales

Introduction

The following supervisory information and examination procedures apply to retail sales, solicitation, advertising, or offers of any insurance product or annuity[1] to a consumer[2] by a bank or any person engaged in such activities at an office of the bank or on behalf of the bank. These materials do not apply to sales of insurance or annuities that occur as part of a bank's trust or fiduciary activities.

Insurance products are not FDIC-insured and may involve investment risk. Consequently, examiners must assess the quality of an institution's compliance management system (CMS) as it pertains to the retail sale of insurance and annuities. Examiners must consider whether the CMS appropriately manages the risks involved in these activities, including whether the CMS produces compliance with Part 343 of the FDIC's regulations (Consumer Protection in Sales of Insurance) and adherence to the Interagency Policy Statement on Retail Sales of Nondeposit Investment Products (the Interagency Policy Statement)[3] when variable annuities are sold.

Regulatory and Policy Requirements

The primary risks addressed by Part 343 and the Interagency Policy Statement are that consumers will:

- misunderstand the safety of insurance products sold by banks, i.e., assume incorrectly that they are backed by the FDIC or another federal agency, or
- be coerced into believing they must purchase an insurance product or annuity in order to obtain a loan.

FDIC Part 343

Pursuant to the Gramm-Leach-Bliley Act (GLBA), the federal banking agencies have adopted regulations concerning consumer protection in the sale of insurance by banks and thrifts. The regulations, which include the FDIC's Part 343, address matters that are the responsibility of the banking agencies to oversee and not the responsibility of state insurance departments.[4]

Part 343 applies to the bank as well as other parties that offer insurance or annuities on bank premises or on the bank's behalf. Under Part 343, a party offers these products on behalf of the bank when:

- it represents that it is doing so; or
- it pays the bank commissions for receiving customer referrals; or
- documents that evidence the sales transaction refer to the bank.

Interagency Policy Statement

The Interagency Policy Statement contains requirements that overlap with Part 343, particularly with respect to disclosures and the circumstances under which sales and recommendations may be made. To the extent that Part 343 addresses an area, it governs. However, because variable annuities have an investment component, banks that offer them must also adhere to the program requirements explained in the Interagency Policy Statement. In particular, a bank that offers annuities should establish policies and procedures for its sales program and offer variable annuities only when suitable for customers. A detailed explanation of the requirements of the Interagency Policy Statement is contained in the Investment Sales Procedures.

Examination Procedures

During the compliance examination of a bank that offers insurance products, examiners must consider these activities when assessing the quality of the bank's compliance management system (CMS). The specific guidance and procedures contained in this chapter should be used within the framework of the general compliance examination procedures and, specifically, during the pre-examination planning and review and analysis stages of the compliance examination.

Examiners must determine whether the CMS appropriately manages the risks involved in retail insurance sales activities, including adherence to FDIC Part 343, and the Interagency Policy Statement if variable annuities are sold. In doing so, examiners should consider all documentation related to retail insurance sales, including, but not limited to, agreements with third parties, sales activity volume and financial reports, standard disclosures and acknowledgment forms, records

1 The sale of variable annuities is supervised as both an insurance and an investment activity. Consequently, banks that offer these products should be examined under both these procedures and the Compliance Examination Procedures and Supervisory Guidance For Retail Investment Sales Activities (Investment Sales Procedures).

2 In this context, a consumer is an individual who purchases, applies to purchase or is solicited to purchase any type of insurance product to be used primarily for personal, family, or household purposes. See 12 CFR §343.20(d).

3 FDIC Statments of Policy, Law, Regulation and Related Acts.

4 The states continue to be responsible for insurance agent and company licensing, product oversight, rates and forms, and most market conduct regulation, regardless of whether a bank is involved. Moreover, where state law provides greater consumer protection in the sale of insurance than the protection provided by the federal rules, GLBA provides that state law governs. Decisions about which law or regulation provides greater protection are made on a case-by-case basis. The Legal Division should be consulted if such questions arise.

which document the qualifications of sales personnel, and proprietary product management reports.

Based on the examiner's conclusions about the bank's CMS, a determination should be made about the extent of transaction testing or file review necessary to complete the compliance examination. The severity of the CMS weaknesses and operational risk should dictate the intensity of transaction testing. The expanded analysis should be carefully tailored to weaknesses identified in the CMS as it relates to specific retail insurance sales activities, focusing on those areas of the bank's program that present the greatest degree of risk to the bank or to consumers.

At the conclusion of the examination, examiners should document their conclusions about the bank's retail insurance sales activities in the Risk Profile and Scoping Memorandum, examination work papers, and Report of Examination, as appropriate. Banks that fail to comply with applicable laws and regulations, or fail to establish and observe appropriate policies and procedures consistent with Part 343 or with the Interagency Policy Statement when applicable, should be subject to criticism in the Report of Examination and appropriate corrective action.

Pre-examination Planning

During the initial contact with the institution and through the Compliance Information and Document Request (CIDR):

- identify any insurance or annuities sales activities the institution conducts directly or through other entities on its behalf; and
- obtain copies of relevant policies and procedures, third party agreements, disclosures and acknowledgment forms, advertising copy, records and reports.

In addition, state insurance officials should be contacted to obtain copies of any complaint records involving the bank. Information sharing agreements are in place with most states, and a list of contacts is posted on the DSC website: http://fdic01/division/dsc/compliance/SalesInsurance.html

Review and Analysis

Examiners should use the guidance below to evaluate the bank's CMS as it pertains to retail insurance sales activities to determine whether risks are adequately managed. After completing the review of the bank's CMS, examiners should document their conclusions about the retail insurance sales program area through written responses to the Decision Factors described on page IX-2.3. The written response should be retained in the examination workpapers. A Job Aid is provided at the end of these procedures which may be helpful in conducting the review.

Board and Senior Management Oversight Evaluation

Consider whether the bank's board of directors has adopted written policies and procedures for the bank's insurance sales program. If not, are they needed? Are the policies and procedures reviewed and updated as necessary?

Does the board of directors and senior management receive and review sufficient information to provide appropriate direction and control of insurance sales?

For retail insurance sales conducted through a networking arrangement with a third-party vendor, also consider whether:

- The bank conducted an appropriate review of the third party's qualifications, experience, regulatory history, financial condition, and references prior to entering into the arrangement;
- The arrangement is controlled by a written agreement that is approved by the bank's board of directors and contains the following elements:
  - Description of each party's duties and responsibilities;
  - Description of the permissible activities by the third party on bank premises;
  - Controls for the use of bank space, personnel, and equipment;
  - Detailed compensation arrangements for all bank and third party personnel;
  - Requirement that sales representatives are appropriately trained, licensed, and qualified;
  - Requirement that the third party comply with all applicable laws and regulations;
  - Authorization for the bank to monitor the activities of the third party and its sales representatives and to periodically review compliance with the agreement;
  - Authorization for the bank and its banking regulatory agency to have access to such records of the third party as are necessary or appropriate to evaluate compliance;
  - Indemnification for the bank for potential liability caused by the third party's sales activities; and
  - Written employment contracts satisfactory to the bank for personnel employed by both the bank and the third party; and
- Bank senior management periodically monitors the third party's compliance with the agreement.

Compliance Program Evaluation

Policies, Procedures and Internal Controls

Consider whether the retail insurance sales program's policies and procedures include a description of the following elements:

- Types of products sold;
- Supervision of personnel involved in sales; and
- Compliance procedures to ensure sales activities are conducted in accordance with Part 343.

Review the policies and procedures, and through interviews and observation consider the practices of the bank in the following areas:

Sales Setting

Is the area in which insurance is sold physically distinct from the area in which retail deposits are taken?

- Employees do not make insurance recommendations, or take orders for insurance products, even if unsolicited, while located in the routine deposit-taking area. (This includes reviewing any prepared scripts on handling deposit customers, or customers whose certificates of deposit are maturing.)

Referrals

Employees who are not authorized and qualified to sell insurance only make referrals, and do not make insurance recommendations or take orders for insurance products. (This includes reviewing any prepared scripts on referring deposit customers, or customers whose certificates of deposit are maturing.)

- Management and staff (including tellers and receptionists) adhere to part 343 and the bank's insurance sales policy when making customer referrals.

Compensation

Compensation to bank employees for customer referrals is a one-time nominal fee of a fixed dollar amount for each referral, and that the compensation is paid regardless of whether the referral results in a transaction.

Sales Practices

Insurance sales practices, including advertising, would not lead consumers to believe that:

- extensions of credit are tied to the sale of insurance or annuities;
- insurance or annuities are backed by the federal government; or
- products that carry investment risk do not do so.

The bank prohibits insurance sales practices that discriminate against victims of domestic violence or providers of services to such victims.

Disclosures, Advertisements, and Acknowledgements

Standard disclosures and advertising contain at least the following minimum content required by Part 343:

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

Where insurance is offered in connection with a credit application, standard disclosures explain that credit cannot be conditioned on the purchase of insurance from the bank or the consumer's agreement not to purchase insurance elsewhere.

Disclosures are provided consistently with the manner and timing requirements of Part 343.

Disclosures are understandable and meaningful, as required by Part 343.

The bank obtains the customer acknowledgement of receipt of disclosures as required by Part 343.

Personnel Qualifications

Insurance sales employees and management are qualified (appropriate licensing, training, and/or experience) to conduct their authorized duties.

The bank's insurance sales training materials appropriately cover the requirements for referral and sales activities, including any appropriate and inappropriate customer referral activities.

Monitoring

Does the bank conduct monitoring of its retail insurance sales program and that of any third party? Does the monitoring include sales practices, the referral process, the manner and timing of disclosures, and customer acknowledgement of receiving disclosures?

Does the bank review customer complaints to identify compliance issues?

Audit Function Evaluation

Consider whether the bank's audit program includes its retail insurance sales program, including third party activities, and assess the audit program's effectiveness.

Decision Factors

After completing the assessment of the compliance management system, examiners should document their conclusions as to whether risks in the retail insurance sales

program area are adequately managed by the institution, as well as their responses to each of the following Decision Factors:

1. Do the board of directors and senior management provide effective oversight of the retail insurance sales program?
2. Are policies, procedures, information systems, training, and licensing adequate for such sales activities?
3. Does the institution adequately monitor customer referral and insurance sales activities?
4. Does the audit function include the insurance sales program, and is it adequate?

Based on the conclusions and responses to the above questions, examiners should determine the extent of transaction testing or file review necessary to complete the compliance examination. If such review is deemed appropriate, examiners should pull a sample of accounts and/or files and use the Expanded Analysis procedures below.

Expanded Analysis

The examination procedures in this section should be used when examiners identify material weaknesses in the bank's compliance management system that require further review to complete their assessment and to determine the bank's compliance with part 343. The entire set of expanded procedures should not be applied automatically. Examiners should use only those expanded procedures that address specific areas of significant risk, weakness, or supervisory concern.

Disclosures, Notices, Acknowledgements, and Advertisements

Sample customer account files to review disclosures and written acknowledgments, including those incorporated into credit applications.

Review all advertising and promotional materials, including the text of prepared scripts (telemarketing and platform).

Personnel Qualifications

Sample sales representative personnel files to determine whether they have the appropriate licenses and training, and to review their regulatory histories.

Sales Setting

Determine that the retail insurance sales setting is physically distinct from the retail deposit area (visit additional sales locations when practical).

In those instances where there is limited space in the bank, determine that signage and other techniques are used to clearly distinguish the retail insurance sales setting from the retail deposit area to avoid the potential for customer confusion.

Compensation

Review management reports, sales reports, and a sample of employee insurance sales compensation records to verify that customer referral fees are paid as a one-time nominal fee of a fixed dollar amount for each referral, and that the referral fee is paid regardless of whether the referral results in a transaction.

Monitoring

Sample customer account files and evaluate the effectiveness of the bank's monitoring at identifying and eliminating documentation deficiencies.

Review customer complaints and consider whether the bank addressed them adequately and used them to detect potential compliance breakdowns.

Sales Practices

Review sales records to ensure that only licensed personnel sell insurance.

Documenting Examination Findings.

Findings should be documented in the workpapers and incorporated in the report of examination as appropriate. In addition, record the information about the review and analysis of bank insurance sales in SOURCE under the tabbed section labeled "NDP Sales."

References

12 CFR 343: Consumer Protection in Sales of Insurance

FIL 84-2000: Consumer Protection for Bank Sales of Insurance
Federal Register publication of insurance sales rule with preamble that contains useful interpretive information.

Interagency Statement on Retail Sales of Nondeposit Investment Products

Joint Interpretations of the Interagency Statement on Retail Sales of Nondeposit Investment Products
Also released as FIL 61-95: Nondeposit Investment Activities

FIL 84-2001: Questions and Answers on Consumer Protections for Bank Sales of Insurance

FDIC Legal Advisory Opinion 92-74: Whether Bank May Act as Agent for Sale of Fixed Rate Annuities and Permit Sale of Mutual Funds on Its Premises Through "Dual Employees" and Registered Broker-Dealer
Contains useful discussion of compensation.

Job Aids

Job Aid for Review of Retail Sales of Insurance and Annuities				
	Yes	**No**	**N/A**	**Comments**
Policies and Procedures				
1. Do the bank's policies and procedures prohibit sales practices which materially mislead consumers into believing that: • extensions of credit are tied to the sale of insurance or annuities; • insurance or annuities are backed by the federal government; or • products that carry investment risk do not do so? ***See* §343.30(a) and (b)**				
2. Do the bank's policies and procedures detail sales employee qualification, training, licensing and compensation practices? ***See* §343.60.**				
3. Do the bank's policies and procedures establish referral procedures for employees who are not authorized to sell insurance which include limits on referral compensation to a one-time, fixed dollar, nominal fee that is not tied to whether the referral results in a transaction? ***See* §343.50(b)**				
4. To the extent practical, do the bank's policies and procedures require that the area in which insurance is sold is physically distinct from the area in which retail deposits are taken? ***See* §343.50(a)**				
5. Do the bank's policies and procedures prohibit discrimination against victims of domestic violence or providers of services to such victims? ***See* §343.30 (c)**				
Disclosures				
6. Are disclosures readily understandable and meaningful? ***See* §343.40(c)(5)& (6);**				
7. Are written customer acknowledgment forms available for all insurance product disclosures, including those which must be provided when credit applications are taken? ***See* §343.40(c)(7);**				

Job Aid for Review of Retail Sales of Insurance and Annuities				
	Yes	**No**	**N/A**	**Comments**
Disclosures—*continued*				
8. Do disclosures contain at least the minimum required content? "Minimum required content" means that: • Except to the extent that it is not accurate, disclosures inform customers that **insurance and annuities** are: • *not* deposits or obligations of the bank or its affiliates; ***See* §343.40(a)(1)** • *not* guaranteed by the bank or its affiliates; ***See* §343.40(a)(1)** • *not* insured by the FDIC; ***See* §343.40(a)(2)** • *not* insured by or any other agency of the United States or any affiliate of the bank; ***See* §343.40(a)(2) and** • are subject to investment risk, including potential loss of principal. ***See* §343.40(a)(3)**				
9. Where **insurance** is solicited, offered, or sold in connection with a **credit application**, do disclosures state that the bank may not condition the extension of credit on either: • the consumer's purchase of an insurance product or annuity from the bank or any of its affiliates ***See* §343.40(b)(1);** or • the consumer's agreement not to obtain, or a prohibition on obtaining, an insurance product or annuity from an unaffiliated entity? ***See* §343.40(b)(2)**				

Job Aid for Review of Retail Sales of Insurance and Annuities				
	Yes	**No**	**N/A**	**Comments**
Advertising and Promotional Materials				
10. Are they readily understandable and meaningful? ***See* §343.40(c)(5)and (6);**				
11. Do they contain at least the minimum required disclosures, unless they are not accurate for a particular product? The minimum disclosures explains that the product is • NOT A DEPOSIT • NOT FDIC-INSURED • NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY • NOT GUARANTEED BY THE BANK • MAY GO DOWN IN VALUE **See §343.40(c)(5)**				
Training				
12. Does the bank's training program cover insurance sales? Does it offer appropriate training to all employees and management? **See §343.60**				

Job Aid for Review of Retail Sales of Insurance and Annuities				
	Yes	**No**	**N/A**	**Comments**
Monitoring				
Sales Practices 13. Does the bank ensure that sales representatives do not engage in misleading or coercive sales practices? ***See* §343.30.** 14. Does the bank ensure that tellers or other employees who are not authorized or qualified to sell insurance do not make sales recommendations or take orders for such products? ***See* §343.60**				
Manner and Timing of Disclosures 15. Does the bank ensure that disclosures are made in an appropriate and timely way? Does the bank's monitoring system ensure that: • disclosures are provided orally and in writing before an initial sale is completed, ***See* §343.40(c)(1),** • disclosures are provided in advertisements, unless general in nature, ***See* §343.40(d)** • where insurance is solicited, offered, or sold in connection with a credit application, disclosures are provided orally and in writing when the credit application is taken. ***See* §343.40(c)(1)**				
16. Does the bank's monitoring system consider that: • For insurance transactions completed by mail or through electronic media, oral disclosures are not required. ***See* §343.40(c)(2) and (4)(iii);** • For insurance transactions completed by telephone, written disclosures may be provided by mail within three business days after the sale is completed or the credit application is taken. ***See* §343.40(c)(3)** • For insurance transactions completed electronically, written disclosures may be provided electronically, if the consumer affirmatively consents and the disclosures are provided in a format that the consumer may retain or obtain later. ***See* §343.40(c)(4).**				

Job Aid for Review of Retail Sales of Insurance and Annuities				
	Yes	**No**	**N/A**	**Comments**
Monitoring—*continued*				
17. Does the bank's monitoring system ensure that a written customer acknowledgement of receipt of all insurance disclosures, including those which must be provided when credit applications are taken, is obtained: • either when such disclosures are given or before an initial sale is completed. ***See* §343.40(c)(7)** • Except that oral acknowledgements are sufficient for telephone transactions, as long as the bank maintains documentation which shows that acknowledgements have been received and makes reasonable attempts to obtain written acknowledgements from consumers. ***See* §343.40(c)(7)(I) and (ii).**				
18. *Do hiring practices* for insurance sales personnel include consideration of applicants' qualifications and experience? Does the bank ensure that: • Insurance sales personnel are appropriately licensed under applicable state insurance licensing standards. ***See* §343.60.** • Agents possess current licenses for particular products offered. ***See* §343.60.**				
• For agencies with multi-state operations, agents possess current licenses for all states in which the agency operates. ***See* §343.60.**				
• Bank employees who sell variable insurance products must be properly licensed and trained to sell both insurance and securities because these products are treated as securities for the purpose of securities brokerage activities under thhe Securities Exchange Act of 1934.				
19. Does the bank maintain a *system to periodically confirm* that employees remain in good professional standing and are not subject to disciplinary or enforcement action by any state insurance commissioner, or any state or federal regulatory agency?				

Job Aid for Review of Retail Sales of Insurance and Annuities				
	Yes	**No**	**N/A**	**Comments**
Audit Programs				
20. Does the bank have an audit program that includes insurance sales? Is it sufficient given the volume and complexity of the bank's products, as well as the bank's monitoring program?				
Complaint and Resolution Monitoring				
21. Does the bank have a complaint resolution and monitoring program? Is it sufficient? Is it being used as an early warning system to detect potential breakdowns in compliance?				
Management Oversights				
22. Does the bank responsibly manage the insurance and annuity sales compliance process?				

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