



LEGAL DIVISION

1200 West Third Street
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July 2, 2001

TO: ALL LICENSED INSURERS, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, ARKANSAS BANKS LICENSED TO PROVIDE INSURANCE SERVICES, ARKANSAS STATE BANK DEPARTMENT, AGENT TRADE ASSOCIATIONS, INSURER TRADE ASSOCIATIONS AND OTHER INTERESTED PARTIES

Bulletin 5-2001

VOLUNTARY EXPEDITED FILING PROCEDURES FOR INSURANCE APPLICATIONS DEVELOPED TO ALLOW DEPOSITORY INSTITUTIONS TO MEET THEIR DISCLOSURE OBLIGATIONS UNDER SECTION 305 OF THE GRAMM-LEACH-BLILEY ACT

The four principal banking regulatory agencies published final consumer protection rules regarding bank insurance sales on Dec. 4, 2000. The published rules may be obtained from the *Federal Register*, Volume 65, Number 233. Federal regulators recently agreed to postpone the effective date for implementation of the consumer protection rules from April 1, 2001 to Oct. 1, 2001. This was done to accommodate requests from depository institutions for more time to prepare to implement the regulations.

The federal banking agencies promulgated consumer protection regulations pursuant to Section 305 of the Gramm-Leach-Bliley Act (GLBA), governing the sale of insurance products by depository institutions. Among other things, the regulations require depository institutions that sell insurance products to make certain disclosures and receive consumer acknowledgements, which are intended to reduce consumer confusion in the sale of insurance products by depository institutions. To best ensure that these requirements are met, depository institutions may prefer to have these disclosures included on insurance application forms. In order to comply with the federal regulations in this fashion, depository institutions that sell insurance products will need to ask insurers to make the necessary filings with this state. Changes in insurance application forms are subject to review under Ark. Code Ann. §23-79-101 et seq. for life insurance policies and under §23-79-301 et seq. for property and casualty insurance applications.

It is in the best interest of this state and the producers, insurers and depository institutions that operate within its boundaries to adopt an expedited process for reviewing these application forms. This bulletin is promulgated consistent with the spirit of functional regulation to make it more efficient for depository institutions to comply with their obligations to their functional regulators. The purpose of this bulletin is to provide regulated entities with the appropriate forms and instructions to receive expedited approval for insurance application forms that are revised only to add notices to allow depository institutions to meet their disclosure obligations under Section 305 of the GLBA if this method of

compliance is chosen. This process is voluntary. It is up to you, as insurers, to choose whether or not to use this process to expedite the filings of such amended insurance applications.¹

In pertinent part, Section 305 of the GLBA requires that:

The Federal banking agencies shall prescribe and publish in final form . . . 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 Act and provide such additional protections for customers to whom such sales, solicitations, advertising, or offers are directed.

Explanation and Instructions for Expedited Review

The following are two model notices for use by depository institutions and other “covered persons” in complying with the written disclosure requirements that are imposed by Section 305 of the GLBA and the corresponding regulations promulgated by the federal banking agencies. In addition to depository institutions, a “covered person” is any other person who sells, solicits, advertises, or offers an insurance product or annuity to a consumer at an office of the depository institution or on behalf of a depository institution.² The first notice provides the written disclosures that must be given to a consumer in connection with an initial purchase of an insurance or annuity product which is unrelated to an extension of credit. The other notice provides the written disclosures that must be given to a consumer in connection with the solicitation, offer or sale of an insurance or annuity product that is related to an extension of credit.

The federal banking agencies have reviewed the content of both notices and determined that it meets the requirements of 12 C.F.R. 14.40 (a) and (b) in the case of national banks; 12 C.F.R. 208.84 (a) and (b) in the case of state member banks; 12 C.F.R. 343.40 (a) and (b) in the case of state non-member banks; and 12 C.F.R. 536.40 (a) and (b) in the case of savings associations.

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¹ Insurers that are affiliated with banks may, as a service to their bank producer, provide disclosure through their application forms. Providing this language on an insurance application is an option, but is not required. Thus, if the insurer chooses not to provide the disclosure through their application process, the bank will have to do so through other means as set forth in GLBA.

² Activities on behalf of a depository institution include activities where a person, whether at an office of the depository institution or at another location sells, solicits, advertises, or offers an insurance product or annuity and at least one of the following applies:

- (i) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the depository institution;
- (ii) The depository institution refers a consumer to a seller of insurance products or annuities and the depository institution has a contractual arrangement to receive commissions or fees derived from a sale of an insurance product or annuity resulting from that referral; or
- (iii) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the depository institution.

In addition to the content of the notices, the disclosures required by these regulations must be “readily understandable” and in a “meaningful” form. Examples of the types of methods that an institution could use to call attention to the nature and significance of the information provided include: (i) a plain-language heading to call attention to the disclosures; (ii) a typeface and type size that are easy to read; (iii) wide margins and ample line spacing; (iv) boldface or italics for key words; and (v) distinctive type style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information. See 12 C.F.R. 14.40(c)(6) in the case of national banks; 12 C.F.R. 208.84(c)(6) in the case of state member banks; 12 C.F.R. 343.40(c)(6) in the case of state non-member banks; and 12 C.F.R. 536.40(c)(6) in the case of savings associations.

References to “the bank” should be to “the savings association” in the case of a savings association, or may be to the actual name of the bank or savings association.

MIKE PICKENS

DISCLOSURE NOTICE 1: Model Written Disclosure for the Initial Purchase of Insurance or Annuity Products that are *Not Sold* in Connection with an Extension of Credit

Insurance products and annuities:

- Are not a deposit or other obligation of, or guaranteed by, the bank or any affiliate of the bank;
- Are not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the bank, or any affiliate of the bank;
- Involve investment risk, including the possible loss of value. *Note: This disclosure may not be required for all products.*

Please sign to acknowledge receipt of these disclosures:

Name of Customer: _____

Customer Signature: _____

Date: _____

DISCLOSURE NOTICE 2: Model Written Disclosure for Insurance Products that Are Solicited, Offered, or Sold in Connection with an Extension of Credit

In connection with your credit application, [name of bank or savings association] advises you of the following:

- [Name of bank or savings association] may not condition the extension of credit you are applying for on whether you purchase an insurance product or annuity from the bank or the bank's affiliate.
- [Name of bank or savings association] may not condition the extension of credit you are applying for 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.

Insurance products and annuities:

- Are not a deposit or other obligation of, or guaranteed by, the bank or any affiliate of the bank;
- Are not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the bank, or any affiliate of the bank;
- [Involve investment risk, including the possible loss of value.] *Note: This disclosure may not be required for all products.*

Please sign to acknowledge receipt of these disclosures:

Name of Customer: _____

Customer Signature: _____

Date: _____

Forms with Instructions

Attached to this bulletin is a uniform filing transmittal form that has been agreed upon by this state and other states. An insurer wishing to receive expedited treatment of its filing for approval by the Insurance Commissioner shall complete the EXPEDITED FILING—SECTION 305 APPLICATION Form Filing Transmittal Header as directed. No form filing is required unless an insurer chooses to amend a policy to include this information.

In addition, the insurer(s) submitting this filing must certify that the only change made from the previous application form is the addition of the disclosure notices required by Section 305 of the Gramm-Leach-Bliley Act. **Any changes other than the addition of the disclosure language should be addressed in additional, separate filings.** If you have additional filings, you can visit our website at <http://www.state.ar.us/insurance.gov>.

To be complete, a form filing must include the following:

1. A completed, certified Form Filing Transmittal Header for each insurer. Certification is made by signing the appropriate blank on the transmittal form.
2. One copy of each application form to be reviewed for the reviewer's records for each insurer.
3. A filing fee of \$50.
4. A postage-paid, self-addressed envelope large enough to accommodate the return. Note that a comparable filing transmittal form is available in SERFF.

If this filing is for multiple companies, please provide a copy of the transmittal header for each company and an extra copy for return to the company. (i.e. 7 companies = 8 copies)

To ensure meeting the October 1, 2001 compliance date set forth in the federal regulations, such forms should be filed with the Arkansas Insurance Department no later than September 15, 2001.

Effective Date

This bulletin shall take immediate effect and shall expire on January 1, 2002.