Retail Insurance Sales[1]

Introduction

The following supervisory information and examination procedures apply to retail sales, solicitation, advertising, or offers of any insurance product or annuity[2] to a consumer[3] 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)[4] 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.[5]

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 This section fully incorporates the examination procedures issued under DSC RD Memo 05-038: Revised Compliance Examination Procedures and Supervisory Guidance.

2 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).

3 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).

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

5 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.