

## Comptroller of the Currency, Treasury

## § 136.20

meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(i) *Nongovernmental entity or person or NGEF*—(1) *General*. A *nongovernmental entity or person or NGEF* is any partnership, association, trust, joint venture, joint stock company, corporation, limited liability corporation, company, firm, society, other organization, or individual.

(2) *Exclusions*. A nongovernmental entity or person does not include—

(i) The United States government, a state government, a unit of local government (including a county, city, town, township, parish, village, or other general-purpose subdivision of a state) or an Indian tribe or tribal organization established under Federal, state or Indian tribal law (including the Department of Hawaiian Home Lands), or a department, agency, or instrumentality of any such entity;

(ii) A Federally-chartered public corporation that receives Federal funds appropriated specifically for that corporation;

(iii) An insured depository institution or affiliate of an insured depository institution; or

(iv) An officer, director, employee, or representative (acting in his or her capacity as an officer, director, employee, or representative) of an entity listed in paragraphs (i)(2)(i), (i)(2)(ii), or (i)(2)(iii) of this section.

(j) *Party*. The term *party* with respect to a covered agreement means each NGEF and each insured depository institution or affiliate that entered into the agreement.

(k) *Relevant supervisory agency*. The *relevant supervisory agency* for a covered agreement means the appropriate Federal banking agency for—

(1) Each insured depository institution (or subsidiary thereof) that is a party to the covered agreement;

(2) Each insured depository institution (or subsidiary thereof) or CRA affiliate that makes payments or loans or provides services that are subject to the covered agreement; and

(3) Any company (other than an insured depository institution or subsidiary thereof) that is a party to the covered agreement.

(l) *Term of agreement*. An agreement that does not have a fixed termination

date is considered to terminate on the last date on which any party to the agreement makes any payment or provides any loan or other resources under the agreement, unless the relevant supervisory agency for the agreement otherwise notifies each party in writing.

## PARTS 134–135 [RESERVED]

## PART 136—CONSUMER PROTECTION IN SALES OF INSURANCE

Sec.

136.10 Purpose and scope.

136.20 Definitions.

136.30 Prohibited practices.

136.40 What you must disclose.

136.50 Where insurance activities may take place.

136.60 Qualification and licensing requirements for insurance sales personnel.

APPENDIX A TO PART 136—CONSUMER GRIEVANCE PROCESS

AUTHORITY: 12 U.S.C. 1462a, 1463, 1464, 1831x, and 5412(b)(2)(B).

SOURCE: 76 FR 48987, Aug. 9, 2011, unless otherwise noted.

### § 136.10 Purpose and scope.

(a) *General rule*. This part establishes consumer protections in connection with retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by:

(1) Any Federal savings association;

or

(2) Any other person that is engaged in such activities at an office of a Federal savings association or on behalf of a Federal savings association.

(b) *Application to operating subsidiaries*. For purposes of § 159.3(h) of this chapter, an operating subsidiary is subject to this part only to the extent that it sells, solicits, advertises, or offers insurance products or annuities at an office of a Federal savings association or on behalf of a Federal savings association.

### § 136.20 Definitions.

As used in this part:

*Affiliate* means a company that controls, is controlled by, or is under common control with another company.

**§ 136.30**

**12 CFR Ch. I (1-1-13 Edition)**

*Company* means any corporation, partnership, business trust, association or similar organization, or any other trust (unless by its terms the trust must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust). It does not include any corporation the majority of the shares of which are owned by the United States or by any state, or a qualified family partnership, as defined in section 2(o)(10) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(o)(10)).

*Consumer* means an individual who purchases, applies to purchase, or is solicited to purchase from a covered person insurance products or annuities primarily for personal, family, or household purposes.

*Control* of a company has the same meaning as in section 3(w)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(5)).

*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:

(1) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault;

(2) 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;

(3) Subjecting another person to false imprisonment; or

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

*Electronic media* includes any means for transmitting messages electronically between a covered person and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

*Office* means the premises of a Federal savings association where retail deposits are accepted from the public.

*Subsidiary* has the same meaning as in section 3(w)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(4)).

*You* means:

(1) A Federal savings association, as defined in §141.11 of this chapter; or

(2) Any other person only when the person sells, solicits, advertises, or offers an insurance product or annuity to a consumer at an office of a Federal savings association, or on behalf of a Federal savings association. For purposes of this definition, activities on behalf of a Federal savings association include activities where a person, whether at an office of the savings association 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 savings association;

(ii) The savings association refers a consumer to a seller of insurance products and annuities and the savings association 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 savings association.

**§ 136.30 Prohibited practices.**

(a) *Anticoercion and antitying rules.* You may not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of section 5(q) of the Home Owners' Loan Act (12 U.S.C. 1464(q)), is conditional upon either:

(1) The purchase of an insurance product or annuity from a Federal savings association 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 or annuity from an unaffiliated entity.

(b) *Prohibition on misrepresentations generally.* You may not engage in any practice or use any advertisement at

any office of, or on behalf of, a Federal savings association or a subsidiary of a Federal savings association that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The fact that an insurance product or annuity you or any subsidiary of a Federal savings association sell or offer for sale is not backed by the Federal government or a Federal savings association, or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation;

(2) In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or

(3) In the case of a Federal savings association or subsidiary of a Federal savings association at which insurance products or annuities are sold or offered for sale, the fact that:

(i) The approval of an extension of credit to a consumer by the savings association or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the savings association or a subsidiary of a savings association; and

(ii) The consumer is free to purchase the insurance product or annuity from another source.

(c) *Prohibition on domestic violence discrimination.* You may not sell or offer for sale, as principal, agent, or broker, any life or health insurance product if the status of the applicant or insured as a victim of domestic violence or as a provider of services to victims of domestic violence is considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of such product, or with regard to the payment of insurance claims on such product, except as required or expressly permitted under state law.

**§ 136.40 What you must disclose.**

(a) *Insurance disclosures.* In connection with the initial purchase of an insurance product or annuity by a consumer from you, you must disclose to

the consumer, except to the extent the disclosure would not be accurate, that:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, a Federal savings association or an affiliate of a Federal savings association;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, a Federal savings association, or (if applicable) an affiliate of a Federal savings association; and

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value.

(b) *Credit disclosures.* In the case of an application for credit in connection with which an insurance product or annuity is solicited, offered, or sold, you must disclose that a Federal savings association may not condition an extension of credit on either:

(1) The consumer's purchase of an insurance product or annuity from the savings association or any of its affiliates; or

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

(c) *Timing and method of disclosures—*

(1) In general. The disclosures required by paragraph (a) of this section must be provided orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer. The disclosure required by paragraph (b) of this section must be made orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity is solicited, offered, or sold.

(2) *Exception for transactions by mail.* If you conduct an insurance product or annuity sale by mail, you are not required to make the oral disclosures required by paragraph (a) of this section. If you take an application for credit by mail, you are not required to make the oral disclosure required by paragraph (b) of this section.

(3) *Exception for transactions by telephone.* If a sale of an insurance product

or annuity is conducted by telephone, you may provide the written disclosures required by paragraph (a) of this section by mail within 3 business days beginning on the first business day after the sale, solicitation, or offer, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a). If you take an application for credit by telephone, you may provide the written disclosure required by paragraph (b) of this section by mail, provided you mail it to the consumer within three days beginning the first business day after the application is taken, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(4) *Electronic form of disclosures.* (i) Subject to the requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001(c)), you may provide the written disclosures required by paragraph (a) and (b) of this section through electronic media instead of on paper, if the consumer affirmatively consents to receiving the disclosures electronically and if the disclosures are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(ii) You are not required to provide orally any disclosures required by paragraphs (a) or (b) of this section that you provide by electronic media.

(5) *Disclosures must be readily understandable.* The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For instance, you may use the following disclosures in visual media, such as television broadcasting, ATM screens, billboards, signs, posters and written advertisements and promotional materials, as appropriate and consistent with paragraphs (a) and (b) of this section:

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

(6) *Disclosures must be meaningful.* (i) You must provide the disclosures re-

quired by paragraphs (a) and (b) of this section in a meaningful form. Examples of the types of methods that could call attention to the nature and significance of the information provided include:

(A) A plain-language heading to call attention to the disclosures;

(B) A typeface and type size that are easy to read;

(C) Wide margins and ample line spacing;

(D) Boldface or italics for key words; and

(E) Distinctive type size, style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

(ii) You have not provided the disclosures in a meaningful form if you merely state to the consumer that the required disclosures are available in printed material, but do not provide the printed material when required and do not orally disclose the information to the consumer when required.

(iii) With respect to those disclosures made through electronic media for which paper or oral disclosures are not required, the disclosures are not meaningfully provided if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

(7) *Consumer acknowledgment.* You must obtain from the consumer, at the time a consumer receives the disclosures required under paragraphs (a) or (b) of this section, or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. You may permit a consumer to acknowledge receipt of the disclosures electronically or in paper form. If the disclosures required under paragraphs (a) or (b) of this section are provided in connection with a transaction that is conducted by telephone, you must:

(i) Obtain an oral acknowledgment of receipt of the disclosures and maintain sufficient documentation to show that the acknowledgment was given; and

(ii) Make reasonable efforts to obtain a written acknowledgment from the consumer.

(d) *Advertisements and other promotional material for insurance products*

## Comptroller of the Currency, Treasury

## § 141.2

*or annuities.* The disclosures described in paragraph (a) of this section are required in advertisements and promotional material for insurance products or annuities unless the advertisements and promotional material are of a general nature describing or listing the services or products offered by a Federal savings association.

### § 136.50 Where insurance activities may take place.

(a) *General rule.* A Federal savings association must, to the extent practicable:

(1) Keep the area where the savings association conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public;

(2) Identify the areas where insurance product or annuity sales activities occur; and

(3) Clearly delineate and distinguish those areas from the areas where the savings association's retail deposit-taking activities occur.

(b) *Referrals.* Any person who accepts deposits from the public in an area where such transactions are routinely conducted in a Federal savings association may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that 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.

### § 136.60 Qualification and licensing requirements for insurance sales personnel.

A Federal savings association may not permit any person to sell or offer for sale any insurance product or annuity in any part of the savings association's office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable state insurance licensing standards with regard to the specific products being sold or recommended.

## APPENDIX A TO PART 136—CONSUMER GRIEVANCE PROCESS

Any consumer who believes that any Federal savings association or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the savings association or on behalf of the savings association has violated the requirements of this part should contact the Customer Assistance Group, Office of the Comptroller of the Currency, (800) 613-6743, 1301 McKinney Street, Suite 3710, Houston, Texas 77010-3031.

## PARTS 137–140 [RESERVED]

## PART 141—DEFINITIONS FOR REGULATIONS AFFECTING FEDERAL SAVINGS ASSOCIATIONS

Sec.

141.1 When do the definitions in this part apply?

141.2 Act.

141.5 Commercial paper.

141.7 Corporate debt security.

141.8 Debit card.

141.10 Dwelling unit.

141.11 Federal savings association.

141.14 Home.

141.15 Improved nonresidential real estate.

141.16 Improved residential real estate.

141.18 Interim Federal savings association.

141.19 Interim state savings association.

141.20 Loans.

141.21 Nonresidential real estate.

141.22 [Reserved]

141.23 Residential real estate.

141.25 Single-family dwelling.

141.26 Surplus.

141.27 Unimproved real estate.

141.28 Withdrawal value of a savings account.

AUTHORITY: 12 U.S.C. 1462a, 1463, 1464, 5412(b)(2)(B).

SOURCE: 76 FR 48990, Aug. 9, 2011, unless otherwise noted.

### § 141.1 When do the definitions in this part apply?

The definitions in this part and in 12 CFR part 161 apply throughout parts 100 through 199 of this chapter, unless another definition is specifically provided.

### § 141.2 Act.

The term *Act* means the Home Owners' Loan Act of 1933, as amended.