

# Insurance Consumer Protection Program

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## EXAMINATION PROCEDURES

### Examination Objectives

Determine the quality of the institution's established compliance policies, procedures, practices, and oversight by management regarding insurance sales activities.

Assess the effectiveness of the institution's internal compliance management program for monitoring insurance or annuity sales activities and applicable state regulatory requirements for these activities.

Determine whether the institution implements appropriate measures to ensure consumers receive, understand, and acknowledge the receipt of insurance and credit disclosures associated with initial sales of insurance products or annuities.

Determine whether the institution's advertisements and promotional materials contain the minimum insurance disclosures.

Obtain commitments from management for corrective action when policies, procedures, or management oversight is deficient or when you identify violations.

## EXAMINATION PROCEDURES

### Understand Insurance Operations

Understanding how to assess compliance risks associated with insurance or annuity sales programs presents a challenge in light of functional regulation (discussed earlier in section 1380 of the Handbook) as enacted by the Gramm-Leach-Bliley Act (the Act). Functional regulation does not limit your ability to examine insurance activities carried out directly by the institution or a thrift holding company. Furthermore, it does not in any way limit the applicability of the insurance consumer protection regulation (12 CFR Part 536). Essentially, the insurance consumer protection regulation applies to thrift institutions, as well as other persons (including functionally regulated affiliates, subsidiaries, or any other entity) selling, soliciting, advertising, or offering an insurance product or annuity at an office of the thrift institution or on behalf of the thrift institution.

Where the institution relies on an insurance company or other functionally regulated entity, (affiliate or subsidiary of any insured depository institution) or any other third party provider to administer selling insurance or annuities at an office of the thrift institution or on behalf of the institution, management cannot abdicate its compliance management responsibility for maintaining oversight of the program to the third party. Under this structure, the role of institution management involves regular oversight and

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monitoring of the functionally regulated entity or third party sales operation for ensuring compliance with written agreements, institution policy, and applicable laws and regulations. This oversight includes establishing a compliance management program to evaluate compliance by the functionally regulated entity or other third party provider with the appropriate polices and procedures.

Regardless of the structure of the insurance sales program, institution management must ensure that it has adequate internal controls and procedures for accomplishing active oversight of sales activities conducted by the institution, at an office of the institution or on behalf of the institution.

## **SCOPING (LEVEL I)**

You should obtain information necessary to conduct the scoping review through the PERK package, the functionally regulated entity and its primary regulator or from other available pre-exam preparation methods whenever feasible.

1. Through discussions with institution management and review of available reports and information, evaluate the institution's organizational structure (i.e. direct sales, service corporation, subsidiary, affiliates, or third - party arrangements) of insurance sales operations.

Consider the following:

- Determine whether the institution conducts sales directly or through another entity and, if the latter, whether the entity is a functionally regulated entity;
- Determine the types of insurance products or annuities offered, solicited, advertised, or sold.

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2. Review the assignment of management responsibilities for overseeing the institution's insurance activities, however conducted.

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3. Review the reporting relationships, reporting frequency and standards established by the institution to achieve accountability, and the record of Board involvement in developing and overseeing the institution's insurance business plan and activities.
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4. Obtain and review the consumer complaints record of the institution (or any entity engaged in insurance sales at an office of the thrift institution or on behalf of the institution) with OTS or any other relevant agency with respect to insurance or annuity sales practices, advertising, or other conduct related to the consumer protections afforded by the regulation.  

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5. Obtain and review any written agreements between the institution and entities engaged in insurance or annuity sales at an office of the thrift institution or on behalf of the institution with respect to representations and warranties covering obligations of both parties.  

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6. Obtain and review any monitoring reports covering litigation involving insurance activities conducted by, at, or on behalf of the institution.  

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Use this review and analysis to identify areas of risk with respect to compliance with the regulation and plan your examination of the institution's insurance activities to best address those concerns and meet the objectives of this examination program. When identifying areas of risk, consider each substantive compliance area addressed by the regulation and identified as an element of **Level II analysis**.

## **Analysis of Compliance Management Capacity and Execution (Level II)**

For each substantive compliance area that follows determine whether (i) policies and procedures establish standards for product delivery in accordance with enumerated regulatory obligations, and (ii) controls, monitoring, audits, and complaint resolution processes are used to manage insurance activities in compliance with those institutional standards and regulatory obligations.

Evaluate the compliance management program of the institution by making the determinations called for in each substantive area. When conducting an evaluation, you may consider judgmentally sampled transactions or other operational report checks where necessary to confirm your conclusions about the adequacy of management's compliance program.

For insurance and annuity sales operations conducted at an office of the thrift institution or on behalf of the institution by a functionally regulated entity: (i) obtain and review any public reports available

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from the institution used for its internal review and monitoring of the functionally regulated entity's insurance sales program; (ii) obtain and review any reports available from the functionally regulated entity pursuant to the latest agency guidance; and (iii) obtain and review any reports available from state insurance regulators with oversight responsibility for the functionally regulated entity involved in the institution's sales activities subject to the regulation.

Use these materials to make the determinations called for in the following Level II analysis when the activity being reviewed is conducted through a functionally regulated entity.

Where the institution's policies, procedures, systems, or internal controls fail to properly assure compliance by it or those who conduct insurance activities for it, you should conduct a more probative transactions or operations review of the deficient area (**Level III**).

## **Sales Practices**

7. Review the Matters Requiring Board Attention and Corrective Actions from the three or four previous ROEs to ensure that the board and management have taken appropriate corrective action where necessary and persistent problems have not recurred.

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8. Determine whether policies and procedures governing personnel engaged in insurance or annuity sales, prohibit practices such as:

- misleading any person to believe that an extension of credit is conditional upon the purchase of an insurance product or annuity from the thrift institution or any of its affiliates (12 CFR 536.30(a)(1));
- misleading any person to believe they cannot purchase insurance products from an unaffiliated entity (536.30(a)(2));
- misleading any person concerning the lack of FDIC insurance or investment risk (12 CFR 536.30(b)) associated with an insurance product or annuity; and
- discriminating against victims of domestic violence in the offering or sale of any life or health insurance products (12 CFR 536.30(c)).

by reviewing:

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- institution’s polices and procedures;
  - training programs and other means used by management to communicate and reinforce policies and procedures; and
  - the process used by management to maintain policies and procedures current with changes in regulatory obligations.
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9. Determine whether management uses internal controls, monitoring, audits, and complaint resolution processes relating to sales practices to maintain compliance with the institution standards and regulatory obligations by evaluating:

- recordkeeping rules that establish a compliance “paper” trail for sales practices and any audit of those rules or records;
  - any program of internal oversight of sales personnel activities including individual performance evaluations, or customer surveys or other feedback covering sales practices, or monitoring of live or taped sales calls or presentations;
  - any disciplinary or corrective personnel actions taken with respect to infractions of institution sales practice standards or regulatory sales practice requirements; and
  - management’s handling of consumer complaints regarding sales practices.
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10. Determine whether policies and procedures governing referral fees ensures that persons who accept deposits in areas where deposit-taking is routinely conducted, receive only a one-time nominal fee of a fixed dollar amount for each referral, independent of whether the referral results in a transaction,

by reviewing:

- institution policy and procedures;
- training programs and other means of communicating compensation policies and procedures with eligible personnel, especially tellers; and/or

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- the understanding and experience of eligible personnel about referral compensation by interviewing them.
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11. Determine whether internal controls, monitoring, audits, and complaint resolution processes relating to referral compensation are used by management to maintain compliance with institution standards and regulatory obligations by evaluating:

- systems used to authorize payment of referral compensation;
  - reports generated by payroll accounting systems that track referral compensation and any audit reports of those systems; and
  - any program of internal oversight of compensation practices.
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## **Advertising**

12. Determine whether policies and procedures governing the preparation of advertising or promotional materials for the marketing of insurance or annuity products:

- prohibit misleading any person concerning:
  - the federal guarantee status, or investment risk associated with an insurance product (12 CFR 536.30 (b));
  - the tying of credit approval to the purchase of an insurance product (12 CFR 536.30(b)(3)(i)); or
  - whether the person is free to purchase an insurance product from another source (12 CFR 536.30(b)(3)(ii)); and
- require that regulatory mandated disclosures are appropriately included in advertising copy or promotional materials (536.40(c)(5),

by reviewing:

- the institution's policies and procedures; and

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- any guidelines or specifications established for personnel (including advertising agencies) with respect to the requisite content of advertising copy or promotional materials.
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13. Determine whether policies and procedures governing the preparation of advertising or promotional materials for the marketing of insurance or annuity products:

- prohibit misleading any person concerning:
  - the federal guarantee status, or investment risk associated with an insurance product (12 CFR 536.30 (b));
  - the tying of credit approval to the purchase of an insurance product (12 CFR 536.30(b)(3)(i)); or
  - whether the person is free to purchase an insurance product from another source (12 CFR 536.30(b)(3)(ii)); and
- require that regulatory mandated disclosures are appropriately included in advertising copy or promotional materials (536.40(c)(5),

by reviewing:

- the institution's policies and procedures; and
  - any guidelines or specifications established for personnel (including advertising agencies) with respect to the requisite content of advertising copy or promotional materials.
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## ***Disclosures and Acknowledgments***

14. Determine whether policies and procedures governing the delivery of insurance and credit disclosures (12 CFR 536.40) require the following actions:

- insurance disclosures be given to consumers prior to the initial purchase of insurance products or annuities (12 CFR 536.40 (c)(1));

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- credit disclosures be given to consumers at the time of application for an extension of credit in connection with which an insurance product or annuity is solicited, offered, or sold (12 CFR 536.40(c)(1));
- electronic disclosures be provided in a format the consumer can retain or obtain later (Example - By printing or downloading) (12 CFR 536.40 (c)(4); and
- receipt of consumer acknowledgment of insurance and/or credit disclosures (12 CFR 536.40(c)(7)).

by reviewing:

- the institution's policies and procedures;
- training programs and other guidelines used by management to communicate and reinforce disclosure requirements; and
- sample application and other transaction forms to confirm correctness of content.

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15. Determine whether policies and procedures governing the content of:

- Insurance disclosures (12 CFR 536.40) require representations that the insurance product or annuity:
  - is not a deposit nor guarantee of the institution;
  - is not FDIC insured or backed by any other United States government agency;
  - involves investment risk including possible loss of principal; and
- Credit disclosures (anti-tying/anti-coercion) require representations that an extension of credit may not be conditioned on the purchase of an insurance product or annuity from the institution, an agreement by the consumer not to obtain an insurance product or annuity or prohibiting the consumer from obtaining an insurance product or annuity from an unaffiliated entity,

by reviewing:

- the institution's policies and procedures;

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- training programs and other guidelines used by management to communicate and reinforce disclosure requirements; and
  - sample application and other transaction forms to confirm correctness of content.
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16. Determine whether management uses internal controls, monitoring, audits, and complaint resolution processes relating to disclosures to maintain compliance with institution standards and regulatory obligations by evaluating:

- the systems used to generate disclosures and to timely include them in transaction paperwork;
  - recordkeeping rules that establish a compliance track record with respect to the delivery of disclosures;
  - any program of internal oversight of disclosure content and delivery ensuring consumers receive and acknowledge the receipt of insurance and/or credit disclosures;
  - the role of compliance personnel in monitoring disclosure content, ensuring it is presented in a timely and meaningful form; and
  - management's handling of consumer complaints regarding incomplete, inaccurate, or untimely disclosures or non-receipt of disclosures.
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## ***Qualifications and Licensing (12 CFR 536.60)***

17. Determine whether policies and procedures governing the qualifications and licensing of sales representatives establish standards that:

- require all sales representatives be appropriately licensed and qualified under applicable state licensing standards to sell specific insurance or annuity products; and
- ensure institution personnel not qualified or licensed are prohibited from marketing or selling insurance or annuity products.

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by reviewing:

- the institution's policies and procedures;
  - guidelines established for ensuring sales representatives receive training on new or revised laws and regulations that may affect licensing requirements;
  - training programs and other guidance for personnel not qualified to sell insurance; and
  - any forms used for reporting or certifying to the institution the qualifications of sales representatives.
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18. Determine whether management uses internal controls, monitoring, and audits that relate to the qualifications and licensing of sales representatives to maintain compliance with institution standards and regulatory obligations by evaluating:

- whether personnel recordkeeping systems track qualifications, license renewals, and sanctions of insurance sales representatives;
  - any program of internal oversight or audit pertaining to the qualification and licensing requirements of sales representatives; and
  - the process used for conducting reference checks and license verifications when hiring or contracting with insurance sales personnel or agencies.
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## ***Location of Insurance Sales Activities***

19. Determine whether insurance or annuity sales activities in an institution branch or office must be conducted in a location that is physically distinct and segregated from routine deposit taking areas of the institution (typically teller windows and teller lines, (12 CFR 536.50))

by reviewing:

- institution policies and procedures;
- training programs and other guidance for personnel to assure they understand the physical segregation requirement; and

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- any standards or model floor plans established by the institution with respect to office layout when insurance activities are conducted in a branch or office of the institution;
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20. Determine whether internal controls, monitoring, audits, and complaint resolution processes concerning physical location of insurance activities are used by management to maintain compliance with institution standards and regulatory obligations by evaluating:

- any method of reporting or verifying local management compliance;
  - any program of internal oversight or testing used to confirm physical separation of insurance and deposit-taking activities; and
  - management's handling of consumer complaints regarding the location of insurance sales activities.
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### ***Concluding Level II Analysis***

21. Based on the results of the foregoing procedures, evaluate the performance of compliance management to determine whether a more extensive analysis is required. If you conclude that institution

- policies and procedures,
- internal controls and self evaluation, and
- management's record of taking appropriate corrective action,

demonstrate good management performance and thorough regulatory compliance, then further analysis to complete your examination is not necessary.

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## Transactions Analysis (Level III)

22. When the institution's compliance management performance is deficient for a particular area or the examiner cannot otherwise reach a substantiated conclusion about the adequacy of the institution's compliance performance, conduct sufficient transaction or operations analysis to determine the extent of the deficiency, the presence of regulatory violations, and the corrective action(s) required.
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23. Conduct or expand transaction samples, account record reviews, or interviews of sales personnel covering the substantive areas where you have noted deficiencies.

This detailed analysis should enable you to determine whether regulatory violations:

- are thrift-wide or limited to a particular geographic market or decision-center;
- involve single or multiple product(s); or
- are systemic; repeated, but not systemic; or infrequent.

An institution may conduct an analysis at this level under the directions of the examiner, when the region is confident that the institution can do so reliably.

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24. Where (1) the institution's compliance management is deficient in monitoring the insurance or annuity sales activities conducted by a functionally regulated entity engaging in the activity at an office of or on behalf of the institution and (2) those sales activities fail, or you suspect those sales activities fail, to comply with institution policies and the Insurance Consumer Protection Regulation (12 CFR Part 536) the following procedures should be applied:

- Review and discuss your findings/concerns relating to the functionally regulated entity's sales activities with your supervisor, regional counsel, and assistant Regional Director;
- Consult the latest agency guidance regarding examining functionally regulated entities;

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- If you determine an examination of the functionally regulated entity is deemed necessary, proceed in accordance with the latest agency guidance. Document the basis of your decision.
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## Formulate Conclusions

25. Summarize the results of your Level I Scoping Analysis and the focus it provides for Level II Compliance Review. Describe the basis for conducting any Level III review;
- Identify and record weaknesses in internal controls, compliance management, or other areas;
  - Identify and record violations of regulatory requirements or other pertinent findings;
  - Discuss suspected violations of state law by the institution or its functionally regulated provider with your supervisor and regional counsel, to decide what information to share with State Insurance regulators.
  - Discuss findings with institution management and obtain a commitment for corrective action.
  - State conclusions and overall evaluation in report of examination;
  - Determine the need for supervisory or enforcement action.
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## EXAMINER'S SUMMARY, RECOMMENDATIONS, AND COMMENTS

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