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The Pennsylvania Insurance Producer Licensing Act: Five Years Later
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It has been almost five years since the enactment of Act 147 of 2002 (the Insurance Producer Licensing Act or Act) which governs the licensing and regulation of "Insurance Producers" in the Commonwealth. This legislation was enacted in response to the mandate set forth in the Gramm-Leach-Bliley Act of 1999 (GLBA) that at least 29 states must pass uniform legislation by November of 2002 or the federal government would assume all state insurance licensing functions. This article will focus on certain ambiguities in the provisions which impact bank insurance sales activities, and discuss, where appropriate, the impact of subsequent legislation on those provisions.

Sales on or from the Premises of a Financial Institution

- Sales of insurance (except credit insurance) "shall take place in a location which is distinct from the area where deposits are taken and loan applications are discussed and accepted." Under the Act, compliance with the Interagency Statement of Policy on the Retail Sale of Nondeposit Investment Products (issued February 15, 1994) will satisfy this requirement.

- The Interagency Statement, however, applies only to retail deposit-taking activities, and not to lending activities. The enforcement of this restriction — to the extent that it requires segregation of insurance sales from lending activities — would appear to be problematic under the anti-discrimination standards set forth in the GLBA.

- A financial institution must formally apply to the Insurance Commissioner for exemptive relief "if the number of staff or size of the facility prevents compliance." To date, I am not aware of any financial institution that has applied to the Insurance Commissioner for relief from this restriction.

License Requirements

- Generally, a person must be licensed as an "insurance producer" if he or she sells, solicits or negotiates a contract of insurance unless certain exceptions apply. The two most notable exceptions for financial institutions are the "clerical" and "group plan" exemptions.

- The practical application of these exceptions has never been clarified by the Department of Insurance. For example, since these exceptions apply only if no commissions are paid for these services, it's not clear whether bank employees must be licensed in order to receive "points" or "credits" for credit insurance sales. It's also not clear whether a financial institution may accept premium payments at its branch offices on behalf of its insurance affiliate.

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Referral Fees

- The Act permits the payment of referral fees to unlicensed persons if the referring person does not discuss specific terms and conditions of any insurance product and, in the case of a referral for insurance that is "primarily for personal, family or household use," the referring person does not receive more than a "one-time nominal fee" of a fixed dollar amount that does not depend upon whether the referral results in a sale.

- The Department of Insurance has never defined a "one-time nominal fee" and it is not clear whether it would defer, by analogy, to the definition of this term set forth in the recently enacted Regulation R with respect to referrals by unlicensed bank employees to a securities broker.

- Referrals from bank personnel who do not accept deposits, such as trust or loan officers, may also be limited to a one-time nominal fee, if the referral relates to insurance that is primarily for "personal, family or household use." Under the banking rules, the nominal fee restriction only applies to deposit-taking employees.

- Referrals for commercial insurance are not restricted to a one-time nominal fee, and may be based on revenues, as long as the person making the referral does not discuss the specific terms of the insurance coverage.

Privacy

- A financial institution may not share with any third party any "insurance coverage information" obtained in making a loan unless the customer has the ability to preclude, or "opt-out" of, such sharing arrangement This would include any information concerning the terms and conditions of insurance coverage, expiration dates, claims or history obtained in the loan process.

- This provision is more restrictive than the related rule under GLBA, which permits the sharing of "insurance coverage information" among affiliates without restriction, and applies only to "non-public personal information."

Under the affiliate marketing rules recently issued by the federal banking agencies, a financial institution also would be prohibited under the Fair Credit Reporting Act from using this information for marketing purposes unless the consumer is given the opportunity to opt out of such solicitation.

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