

Insights

November Hoosier Banker: Compliance Connection with Partner Brett Ashton

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Question 1: Our bank recently entered into a marketing agreement with an insurance company, with the goal of generating additional income by offering life and property insurance products to our loan customers. Does Indiana law allow us to require customers to obtain insurance with their loans?

Answer: Yes, Indiana law generally permits you to require loan customers to obtain insurance, but with some significant caveats. For the sale of life insurance products, Ind. Code § 28-1-11-2.5(a) provides that "A bank (or trust company) may act as an insurance producer for the sale of any life insurance policy or annuity contract issued by a life insurance company authorized to do business in any state in which the agent operates." That said, the bank must follow the requirements of the Indiana Insurance Code, and cannot condition an extension or renewal of credit, or the amount charged for extending the credit on the customer purchasing the policy from the bank, an affiliate of the bank, or through any particular insurer, insurance producer, broker or group of insurers or producers.¹

A bank may, however, inform the customer that acceptable insurance is required; that loan approval is contingent upon the customer's obtaining this insurance; and that the bank, or the insurer that you have an ownership interest in, offers insurance. The bank must also disclose that the insurance related to the loan may be purchased from an insurer or insurance producer chosen by the customer.

Question 2: If we cannot make customers purchase insurance from our bank employees, can we at least have some say in the kind of insurance policies they may obtain elsewhere? For large credits, we want to ensure we have adequate protection in the event of an unexpected death.

Answer: Yes. While Indiana law prohibits a bank from "unreasonably" rejecting insurance coverage obtained by a borrower, it does provide some protection for banks from accepting coverage from insurers that may not be as financially stable as others. Ind. Code 28-1-11-2.5(d) clarifies that the insurance product marketing restrictions discussed above do "[n]ot prohibit a bank (or trust company) from requiring that a person, as a condition to the transaction, obtain a life insurance policy from an insurance company acceptable to the bank."

What constitutes an "acceptable" life insurance product to the bank is yet to be decided by Indiana courts; however, at least for a loan on which a bank requires property insurance, Indiana law does provide guidance. Ind. Code 27-1-

38-7(4) provides, "[r]ejection is not unreasonable if the rejection is based on uniformly applied reasonable standards that: (A) relate to the extent of insurance required; (B) relate to the financial soundness and services of the insurer issuing the policy; (C) do not discriminate against a particular kind of in-surer; and (D) do not require rejection of an insurance policy because the insurance policy provides coverage in addition to the coverage required for the loan of money or extension of credit."

Banks should carefully review Indiana Code § 27-1-38 for the relevant standards applicable to the sale of insurance products in their branches, in addition to applicable federal laws and regulations² to ensure compliance.

¹Ind. Code § 28-1-11-2.5(d); Ind. Code § 27-1-38-7.

²See 12 C.F.R. 14; 12 C.F.R. 343

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