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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

August 31, 1999

The Honorable John D. Dingell  
Ranking Member  
Committee on Commerce  
U.S. House of Representatives  
Washington, DC 20515-6115

Dear Congressman Dingell:

Thank you for your letter of August 6, 1999, regarding the effect that H.R. 10, the Financial Services Act of 1999, as passed by the House of Representatives, would have on the ability of state insurance regulators to intervene on behalf of consumers involved in disputes over the payment of insurance claims. Our responses to your questions are set forth below.

**(1) Should state insurance departments be able to intervene on behalf of consumers in disputes that arise when banks process insurance claims? Please explain.**

Yes. Under current law, the states have primary authority to regulate insurance activities. The scope and nature of that authority varies from state to state, but it typically enables state insurance regulators to intervene if an insurance company fails to honor its contractual obligations to its policyholders or if the company or its claims processor otherwise fails to pay claims in accordance with state requirements. We do not expect H.R. 10 to alter the state insurance regulators' role in this regard. We note, however, that the examples provided by the National Association of Insurance Commissioners (NAIC)<sup>1</sup> demonstrate that in most cases state intervention is appropriately directed at the insurance underwriter, which is responsible for decisions whether to pay claims, and not the claims processor who acts on the underwriter's behalf.

**(2) Section 104(b)(3) of H.R. 10 as passed by the House says that state statutes, regulations, interpretations, orders, and other actions shall not be preempted to the extent that they do not apply to an insured depository institution or a wholesale financial institution and that they do not relate to sales or marketing. The NAIC interprets this**

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<sup>1</sup> NAIC Insurance Consumer Alert, pp. 1-2 (provided as an attachment to the letter from Rep. Dingell to Comptroller Hawke dated August 6, 1999).

**language as preempting the application of state laws, regulations, etc. to bank insurance activities, other than sales and underwriting. These other insurance activities could include the valuation and payment of insurance claims, investment management, and the handling of consumer grievances and complaints. Do you agree that section 104(b)(3) would preempt states from regulating insurance activities performed by banks directly, other than sales and underwriting? Please explain. Would you support changes to the legislation clarifying that state insurance departments may not be preempted from intervening on behalf of consumers in such cases? Please explain.**

Unfortunately, the provisions of section 104 of H.R. 10 that address insurance activities are quite complex and may complicate an area where banks, bank regulators, and state insurance regulators have developed good working relationships and made progress toward resolving issues of mutual interest. Section 104 promises to complicate rather than promote that progress by articulating not one but several Federal standards governing when State laws would be preempted. A state law governing insurance activities other than sales, solicitation, or marketing -- that is, a state law of the type described in this question -- would be preempted: (1) if it "prevents or restricts" an insured depository institution (including a national bank), or its subsidiary or affiliate, from engaging in the activity, if the activity is authorized or permitted by H.R. 10; or (2) if it violates the nondiscrimination tests set out in section 104; (3) unless it is covered by one of the 13 safe harbors contained in section 104, in which case the law cannot be preempted.

Arguably, section 104(b)(3) does not change this regime. Instead, it appears to carve out a category of state laws that may not be preempted under the "prevent or restrict" standard. That category is defined by a four-part test, one part of which is that the law in question may not (with one narrow exception pertaining to savings bank life insurance) apply to insured depository institutions (including national banks). If the law does apply to insured depository institutions, the preemption determination would depend on an evaluation of the law under the "prevent or restrict" standard, the nondiscrimination test, and the 13 safe harbors. Since we believe section 104 is complex, confusing, and likely to encourage expensive and time-consuming litigation, we would support eliminating section 104 entirely from H.R. 10 and replacing it with the current preemption standard articulated by the U.S. Supreme Court in *Barnett Bank of Marion County, N.A. v. Nelson*, 116 S. Ct. 1103 (1996), and in the Court's precedents that *Barnett* cites and discusses.

**(3) The processing of health insurance claims inevitably involves questions of the type and quality of medical care to be provided, as well as the level of payment for services. What is it that makes you think a bank is, or is not well-suited to make the kind of medical judgments involved in the payment of health insurance claims? Please explain. If a bank does perform this claims payment function, do you believe its activities in this regard should be subject to all the requirements state insurance laws and regulations impose on other non-bank entities that perform similar functions? Please explain.**

We agree that national banks conducting claims payment functions should be subject to the same state standards applicable to non-banks providing these services, consistent with the principles articulated by the Supreme Court in *Barnett* and the precedents on which it relies. Under current law, whatever licensing and qualification requirements are mandated for non-banks apply to national banks provided they satisfy the standards embodied in *Barnett*. The various preemption tests that would be applied by section 104 would significantly complicate this situation by substituting a mix of new standards, applicable to different types of insurance activities, to replace the well developed standards that have been articulated by the Supreme Court.

We do not believe that a great many national banks are currently engaged in health insurance claims payment processing. However, as with any line of business, we expect any national bank engaged in this activity to employ staff who are qualified to conduct it.

**(4) If H.R. 10 were to be enacted into law in its present form and state insurance departments were unable to intervene on behalf of consumers whose health and other insurance claims were processed by the bank, (a) is there any other official or entity to whom such insurance consumers could turn for help in resolving disputes over the provision and payment for medical services, (b) what federal government resources are necessary to resolve consumer grievances involving insurance claims processed by banks, and (c) is the OCC able and willing to provide those resources? Please explain.**

We do not believe that H.R. 10 would, or should, have the effect of preventing state regulators from protecting consumers, whether their insurance claims were processed by a bank or another type of entity.

**(5) What is the system for handling consumer complaints about banks that exists at the Office of the Comptroller of the Currency (OCC)? How many full and part-time employees are involved in the taking and resolution of consumer complaints? Is the system centralized, nationally, or are there separate consumer grievance systems in different areas of the country? If there is no central system, how is coordination and the sharing of information among the area systems accomplished?**

The OCC has a centralized system for handling consumer complaints involving national banks that we believe is the most modern in use in the bank regulatory community. As part of our

ongoing efforts to coordinate handling of insurance complaints with the NAIC, we have provided extensive information about our system to the NAIC, and insurance commissioners representing the NAIC have visited our facility.

Our system, which is located in Houston, Texas, is under the direction of the OCC's Ombudsman and is implemented by the OCC's Customer Assistance Group (CAG). The CAG currently consists of 34 employees, 26 of whom are designated "customer assistance specialists" who directly handle consumer inquiries and complaints.

Consumers with questions or complaints may contact the OCC through a toll-free telephone number, fax, or written correspondence. Consumers may also learn about the OCC's complaint resolution process via the OCC's Internet Home Page. If a customer assistance specialist cannot resolve a complaint over the phone, the consumer is requested to put his or her complaint in writing. (The consumer may fill out a form developed by the OCC for this purpose.) Once the complaint is received in writing, the assigned customer assistance specialist sends an acknowledgment letter to the consumer, as well as a copy of the complaint to the bank subject to the complaint, and begins the process of investigating the relevant facts and issues.

The OCC's consumer complaint resolution system includes an automated telephone and call routing system, allows for managerial monitoring of functions (such as number of current calls, number of calls waiting, name of specialist taking call, as well as the ability to access the files and track the status of specific customer complaints), and gives callers options for self-help. This system also uses the latest imaging technology to create an efficient paperless work environment.

**(6) The OCC and the state insurance commissioners have been working to coordinate their handling of insurance complaints. Clearly, the state insurance commissioners have significant experience handling insurance complaints (391,547 in 1997) and have devoted substantial resources to this task (10,000 employees nationwide). How is cooperation between the OCC and the state insurance commissioners affected if H.R. 10 prevents states from exercising their authority under State law to intervene in insurance claims disputes on behalf of consumers whose claims are processed by banks? Please explain.**

As explained previously, we do not believe that H.R. 10 prevents the application of non-discriminatory state laws governing claims processing to national banks.

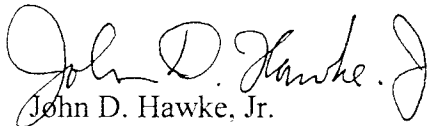
The OCC has entered into agreements with a number of state insurance departments to share consumer complaints relating to national bank insurance sales. Specifically, these agreements provide that the OCC and the state insurance regulator will forward to each other consumer complaints relating to the sale of insurance by national banks that occur in that state, as well as information relating to the resolution of these complaints. The agreements also provide for the OCC and the state insurance regulators to communicate with each other on matters of common interest, such as regulatory and policy initiatives. As of this date, 14 states (Arizona, Connecticut, Oklahoma, Pennsylvania, Delaware, Kentucky, Maine, Maryland, Louisiana,

Alabama, Kansas, North Carolina, North Dakota, and West Virginia) have signed this agreement with the OCC, and we are in negotiations with a number of others. These agreements are intended to further cooperative efforts and communication between the OCC and state insurance officials in order to enhance consumer protection and assure compliance with appropriate insurance sales standards.

Whether or not H.R. 10 is enacted, the OCC will continue to seek execution of consumer complaint-sharing agreements with all 50 state insurance commissioners. Therefore, we trust that the current cooperative efforts between the OCC and state insurance commissioners with respect to national bank insurance sales activities would be unaffected by the passage of H.R. 10.

I hope this information is useful to you. Please let me know if I can be of further assistance.

Sincerely,

A handwritten signature in cursive script that reads "John D. Hawke, Jr." The signature is written in dark ink and is positioned above the printed name and title.

John D. Hawke, Jr.  
Comptroller of the Currency

cc: The Honorable Thomas J. Bliley, Chairman  
Committee on Commerce