
September 30, 2003

**VIA ELECTRONIC MAIL**

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave, N.W.
Washington, D.C. 20551
regs.comments@federalreserve.gov

**Re: Docket No. OP-1158**

Dear Ms. Johnson:

The National Association of Professional Insurance Agents (PIA), hereby submits these comments regarding the Board of Governors of the Federal Reserve System's Proposed Interpretation and Supervisory Guidance concerning the anti-tying restrictions of Section 106 of the Bank Holding Company Act (BHCA) Amendments of 1970. PIA is a non-profit trade association that represents independent insurance agents in all 50 states, Puerto Rico and the District of Columbia. PIA represents members' interests in state capitals and on Capitol Hill in Washington, D.C. to ensure that lawmakers understand insurance agents' positions.

PIA is submitting these comments because it is imperative that the Board of Governors clarify in its guidance that subsidiaries – while not obligated pursuant to Section 106 – *remain bound* by all state insurance laws, including anti-rebating laws.

PIA supports the goal of Section 106 the Bank Holding Company Act and participated actively in its amendment in 1970. During debates these debates, PIA suggested that the provision that became Section 106 of the Bank Holding Company Act Amendments be modeled on the Coercion of Debtors Provisions in the NAIC Unfair Trade Practices Model Act, as it ultimately was. PIA believed strongly then – and continues to believe strongly today – in the BHCA's goal of effectively and appropriately regulating bank holding companies' activities. PIA agrees with the Board of Governors that it is critical that banks be prohibited from undertaking coercive

practices such as conditioning a customer's receipt of a desired product or service upon the purchase of another product or service.

The proposed exception would explicitly clarify that a financial subsidiary of a national or state member bank is treated as an affiliate of the bank, and not as a subsidiary of the bank, for purposes of Section 106. Thus, a financial subsidiary of a national or state member bank would not be subject to the anti-tying restrictions of Section 106. It should be made clear in any published guidance, however, that subsidiaries are nonetheless subject to all applicable state insurance laws, including state anti-rebating laws.[1]

The Gramm-Leach Bliley Act[2] ("GLBA"), enacted in 1999, preserved the States' authority to regulate all insurance activities and mandates compliance with state laws. Pursuant to the GLBA, States retain the authority to *regulate the insurance activities of all persons*.[3] As Section 301 states explicitly, " [t]he insurance activities of any person shall be functionally regulated by the States."[4]

The GLBA imposes only one limitation on the States' authority to regulate insurance sales activities. States are restricted in their regulation of insurance sales activities only to the extent that a state law "prevents or significantly interferes interfere[s] with the ability of a depository institution, or an affiliate thereof, to engage… in any insurance sales, solicitation, or cross-marketing activity."[5] State anti-rebating laws unequivocally do not prevent or significantly interfere with insurance sales, solicitations, or cross-marketing activities undertaken by depository institutions. Thus, all state insurance laws, including those prohibiting rebating, remain valid and enforceable and subsidiaries *must comply with such laws.*

Anti-rebating laws are nearly universal. At present, 48 states have laws prohibiting rebates. These laws generally make it unlawful for an insurance agent to pay, allow, give or offer to pay, allow or give, directly or indirectly, any rebate of premiums payable, any commission, or any paid consideration or inducement whatever, not specified in the policy or contract of insurance. Anti-rebate laws are designed to promote the public welfare by protecting the consumer of insurance products and assuring the sustained solvency of insurance companies. An insurance company's solvency could be adversely affected in the absence of anti-rebating laws because consumers likely would not renew existing policies and attempt annually to find an agent

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1 *See, e.g.* ARIZ. REV. STAT. § 20-385; ME. REV. STAT. ANN. tit. 24-A, § 2162; N.Y. INS. LAW §§ 2324, 4224; TEX. INS. CODE. ANN. Art. 21.14 § 22.

2 Pub. L. No. 106-102, 113 Stat. 1338 (1999), codified at 15 U.S.C. 6801 *et seq*.

3 *See* H.R. Rep. No. 106-434 at 156 (1999), *reprinted in* 1999 U.S.C.C.A.N. 245, 251.

4 GLBA § 301, 15 U.S.C. § 6711.

5 GLBA § 104(d)(2)(A), 15 U.S.C. § 6701(d)(2)(A). In addition, GLBA provides 13 safe harbors from preemption for state laws that are no more burdensome or restrictive than the safe harbors provided in the Act. Included within these thirteen exceptions are anti-tying prohibitions. GLBA § 104(d)(2)(B)(i); 15 U.S.C. § 6701(d)(2)(B)(i).

offering the largest discount from first-year commissions. Similarly, without anti-rebating laws, discrimination among similarly situated insureds could become rampant. An insurer's similarly classified policyholders with identical coverages would be charged different premiums for the same policies. Thus, making sure that all entities are aware of the continuing vitality of the obligations set forth in these laws is paramount.

While the guidance in its present form indicates that subsidiaries remain subject to Federal antitrust laws, it does not explain that subsidiaries are also subject to state anti-rebating laws. This clarification appears to be especially needed because the Proposed Interpretation itself provides as permissible the example of an insurance agency affiliate of a bank offering a discount on premiums the affiliate charges to customers that purchase more than one type of insurance. If not properly done, this type of discounting arrangement may run afoul of state anti-rebating laws. As the Board of Governors previously has noted, however, state insurance anti-rebating laws remain valid and enforceable.[6] The GLBA's functional regulation mandate only bolsters this edict.

Thus, the Board of Governors must make clear that while subsidiaries, like affiliates, are not subject to the prohibitions of Section 106, they nonetheless remain bound by all applicable state insurance laws, including state anti-rebating laws.

Thank you for your consideration.

Sincerely,

Pat Borowski
PIA National
Senior Vice President
Government Relations

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[6] *See* Board of Governors of the Federal Reserve System Banking Holding Companies and Change in Bank Control Final Rule, 12 C.F.R. § 225 (1997), Background and Summary of Final Action, n. 22 and 23, at 76-77 (February 19, 1997).