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OCC Concludes Pennsylvania Law Would Not Apply to National Banks

Washington, D.C. -- The Office of the Comptroller of the Currency (OCC) has published an opinion concluding that a Pennsylvania statute regulating auctioneers would not apply to a national bank that markets and sells certificates of deposit over the Internet. The Pennsylvania law requires that all auctioneers be licensed and subject to examination and inspection by the state.

The OCC's opinion, which was given in response to a request from a Pennsylvania bank, appears in today's Federal Register.

In its response, the OCC said that the activities -- receiving deposits, marketing, and using electronic means to engage in permissible activities -- are clearly authorized for national banks by federal law. The opinion concluded that federal law would preempt laws of the sort passed in Pennsylvania if they were applied to a national bank's online activities because such state laws would conflict with the federal authority for national banks to engage in the activities in question and would violate the OCC's exclusive visitorial powers over national banks.

The OCC published in the Federal Register a request for comments on this preemption request on January 14. Four comment letters were received, three of which expressed the opinion that federal law preempted the state law in this matter. The fourth comment letter was from the Chief Counsel of the Pennsylvania Department of Banking who stated that counsel of the Board of State Auctioneers expressed the view that the Pennsylvania law did not apply to the online auction activity of the national bank. The OCC opinion said that while this comment by the Department of Banking representing the views of the Board might settle the issue for the time being, in light of the non-binding nature of the views presented, it would still be useful to provide an advisory opinion on the application of preemption principles when banking activities, such as offers of certificates of deposit, are conducted over the Internet.

The OCC charters, regulates, and examines approximately 2,400 national banks and 58 federal branches and agencies of foreign banks in the United States, accounting for 57 percent of the nation's banking assets. Its mission is to ensure a safe, sound, and competitive national banking system that supports the citizens, communities, and economy of the United States.