NEWS RELEASE

Comptroller of the Currency
Administrator of National Banks

NR 2001- 86

FOR IMMEDIATE RELEASE
October 3, 2001

Contact: Robert M. Garsson
(202) 874-5770

OCC Concludes that GLBA and Barnett Decision Show Parts of West Virginia Law do not Apply to National Banks

WASHINGTON -- The Office of the Comptroller of the Currency concluded in an opinion that will be published in the *Federal Register* that some provisions of a West Virginia insurance law would be preempted under the Gramm-Leach-Bliley Act (GLBA) and therefore would not apply to national banks.

The West Virginia Bankers Association had asked the OCC for an opinion on whether eight provisions of the West Virginia Insurance Sales Consumer Protection Act apply to national banks. The OCC published a notice of this request in the *Federal Register* on June 2, 2000 and received 67 comments.

In reaching its conclusions, the OCC applied Section 104 of the GLBA. Section 104 provides that, in accordance with the legal standards for preemption set forth in the U.S. Supreme Court's Barnett decision, no state may prevent or significantly interfere with the ability of a depository institution or an affiliate to sell, solicit or cross-market insurance. Section 104 also protects from preemption 13 different types of state law provisions.

As required by Section 104 and Barnett, the OCC based its conclusions on the substantive effects of a particular state provision on a national bank's ability to conduct its insurance business.

The OCC also specifically noted that none of its conclusions on the West Virginia law would result in a finding that any provisions in the model Unfair Trade Practices Act developed by the National Association of Insurance Commissioners would be preempted.

The OCC opined that three provisions of the law cited by the West Virginia Bankers Association were not preempted, four would be preempted and one was only partially preempted.

The OCC's opinion concluded that the following parts of the West Virginia law would be preempted and therefore would not apply to national banks:

- Provisions requiring financial institutions to use separate employees for insurance sales;

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- Restrictions on the timing of bank employee referrals or solicitation of insurance business from customers who have loan applications pending with the bank;
- Restrictions on sharing with bank affiliates information acquired by a financial institution in the course of a loan transaction to solicit or offer insurance; and
- A requirement that financial institutions segregate the place of solicitation or sale of insurance so that it is readily distinguishable as separate and distinct from the deposit-taking and lending areas.

The OCC also concluded that the following provisions of the law would not be preempted and thus would apply to national banks:

- A prohibition against requiring or implying the purchase of an insurance product from a financial institution is required as a condition of a loan;
- A provision prohibiting a financial institution from offering an insurance product in combination with other products unless all of the products are available separately; and
- The requirement that insurance in connection with a loan occurs with the extension of credit and the sale of insurance completed independently and through separate documents.

The OCC also found that parts of one provision of the law applied to national banks and other parts did not. The provision that would apply to national banks prescribes the content of disclosures that a financial institution must make in connection with the solicitation of an insurance product. Also applicable to national banks is the requirement that a financial institution that sells insurance obtain a written acknowledgement, in a separate document, from the insurance customer that certain disclosures were provided. The OCC opinion found that the parts not applicable to national banks were those concerning the manner and timing of certain consumer disclosures.

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The OCC charters, regulates and examines approximately 2,200 national banks and 52 federal branches of foreign banks in the U.S., accounting for more than 54 percent of the nation's banking assets. Its mission is to ensure a safe and sound and competitive national banking system that supports the citizens, communities and economy of the United States.