

the all-cargo air carriers. Although a precise amount cannot be computed because of the limitations of the report, an estimation is possible for revenue budgeting purposes.

**Donald W. Bright,**

*Director, Office of Airline Information,  
Bureau of Transportation Statistics.*

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BILLING CODE 4910-FE-P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

[Docket No. 00-18]

#### Notice of Request for Preemption Determination

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is publishing for comment a written request for the OCC's opinion on whether Federal law preempts certain provisions of the Financial Institutions Insurance Sales Act (FIISA), enacted by the State of Rhode Island in 1996. The purpose of this notice and request for comment is to provide interested persons with an opportunity to submit comments prior to the OCC's issuance of a written opinion in this matter.

**DATES:** Comments must be received on or before October 23, 2000.

**ADDRESSES:** Comments should be sent to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Third Floor, Attention: Docket No. 00-18, Washington, DC 20219. You may submit comments electronically to [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov) or by facsimile transmission to (202) 874-5274. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC, between 9:00 a.m. and 5:00 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874-5043.

**FOR FURTHER INFORMATION CONTACT:** Jean Campbell, Attorney, or Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, (202) 874-5090.

#### SUPPLEMENTARY INFORMATION:

##### Background

In 1996, the Financial Institutions Insurance Association (Requester) filed with the OCC a request for the OCC's

opinion on whether Federal law preempts certain provisions of a Rhode Island statute pertaining to insurance sales by financial institutions. The OCC published a notice and request for comment on January 14, 1997.<sup>1</sup> On March 18, 1997, the OCC extended the comment period until May 15, 1997,<sup>2</sup> so that interested persons could consider, and comment on, the effect of a regulation implementing the Rhode Island statute that was then under consideration by the Rhode Island Department of Business Regulation. Throughout this time period, the Congress was actively considering various financial modernization bills containing provisions relevant to the issues raised by the Requester. Congress passed such legislation—the Gramm-Leach-Bliley Act (Pub. L. 106-102, 113 Stat. 1338)—in November 1999 (GLBA). On July 26, 2000, the Requester renewed its request that the OCC issue an opinion on whether or not Federal law, now including the relevant provisions of GLBA, preempts certain provisions of Rhode Island Law.<sup>3</sup>

Section 114 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Pub. L. 103-328, 108 Stat. 2338) generally requires the OCC to publish in the Federal Register a descriptive notice of certain requests that the OCC receives for preemption opinions. 12 U.S.C. 43. Under section 114, the OCC must publish notice before it issues any opinion letter or interpretive rule concluding that Federal law preempts the application to a national bank of any State law in four designated areas: community reinvestment, consumer protection, fair lending, or the establishment of intrastate branches. Pursuant to section 114, interested persons have at least 30 days to submit written comments. Without making a determination as to whether section 114 applies to this request, the OCC has decided that it is appropriate to use notice and comment procedures given the broad interest in the issues presented. The OCC will publish in the **Federal Register** any final opinion letter we issue concluding that Federal law preempts the provisions of the Rhode Island Law that are the subject of the request.

#### Description of the Request for OCC Preemption Opinion

The OCC has been asked to provide its views on whether section 104 of the

GLBA<sup>4</sup> preempts certain specific provisions of the Rhode Island Law.

Section 104(d)(2)(A) of GLBA provides that “[i]n accordance with the legal standards for preemption set forth in the decision of the Supreme Court of the United States in *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25 (1996), no State may, by statute, regulation, order, interpretation, or other action, prevent or significantly interfere with the ability of a depository institution, or an affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with an affiliate or any other person, in any insurance sales, solicitation, or crossmarketing activity.” However, State provisions are not preempted pursuant to section 104 if they are substantially the same as but no more burdensome or restrictive than any of the thirteen specific provisions—or Safe Harbors—described in section 104(d)(2)(B).<sup>5</sup> The Requester asserts that five specific provisions of the FIISA are preempted and that none of the Safe Harbors protects these provisions.

#### Anti-tying Prohibition

The Requester contends that Federal law should preempt the anti-tying provisions in section 6 of the FIISA and its implementing regulation. Specifically, section 6 provides that:

(a) No financial institution may offer a banking product or service, or fix or vary the conditions of this offer, on a condition or requirement that the customer obtains insurance from the financial institution, or any particular insurance producer.

(b) No person shall require or imply that the purchase of an insurance product from a financial institution by a customer or prospective customer of the institution is required as a condition of, or is in any way related to, the lending of money or extension of credit, the establishment or maintenance of a trust account, the establishment or maintenance of a checking or savings account or other deposit account, or the provision of services related to any of these activities. R.I. Gen. Laws 27-58-6.

The Requester contends that this prohibition is much broader than a prohibition against coercive tying because it prohibits a loan officer from mentioning to a customer that insurance products may be available, at a discount, as part of a package of bank services. The Requester further contends that these prohibitions are more burdensome and restrictive than Safe Harbor (viii) and frustrate, hamper,

<sup>4</sup> 113 Stat. 1338, 1352-59 (November 12, 1999) (to be codified at U.S.C. 6701).

<sup>5</sup> The thirteen Safe Harbors are enumerated in clauses (i) through (xiii) of section 104(d)(2)(B). Each Safe Harbor is referred to in this notice by clause. Thus, Safe Harbor (viii) refers to section 104(d)(2)(B)(viii).

<sup>1</sup> 62 FR 1950 (January 14, 1997).

<sup>2</sup> 62 FR 12883 (March 18, 1997).

<sup>3</sup> This notice refers to the statutory provisions and their implementing regulations, where applicable, collectively as the Rhode Island Law.

impair or interfere with a national bank's ability to exercise its insurance powers.

#### *Sales Force Restrictions*

Section 8 of the FIISA, and its implementing regulation, prohibits bank employees with lending or deposit taking responsibilities from soliciting and selling insurance. Specifically, section 8 provides that:

Solicitation for the purchase or sale of insurance by a financial institution shall be conducted only by persons whose responsibilities do not include loan transactions or other transactions involving the extension of credit, or the taking of deposits. For the purposes of this section however, solicitation does not include signage on the premises. (R.I. Gen. Laws 27-58-8.)

The Requester contends that this provision would prohibit a properly state-licensed private banker from both accepting deposits and selling insurance products to a private banking customer. The Requester further contends that this prohibition would destroy "platform programs" and those in which staff members work as dual employees, and could limit the ability of certain financial institutions, particularly smaller ones, to exercise their insurance powers. The Requester asserts that this provision is more burdensome and restrictive than any of the Safe Harbors and would prevent or significantly interfere with the ability of a financial institution to exercise its authority to sell insurance.

#### *Confidential Customer Information*

Section 10 of the FIISA, and its implementing regulation, prohibits financial institutions from using or disclosing certain customer information for the purpose of selling or soliciting insurance. Specifically, section 10 provides that:

(1)(b) "Nonpublic customer information" means information regarding a person that has been derived from a record of a financial institution, including information concerning the terms and conditions of insurance coverage, insurance expirations, insurance claims, or insurance history of an individual. Nonpublic customer information does not include customer names, addresses or telephone numbers.

(2) No financial institution shall use any nonpublic customer information for the purpose of selling or soliciting the purchase of insurance or provide the nonpublic customer information to a third party for the purpose of another's sale or solicitation of the purchase of insurance. (R.I. Gen. Laws 27-58-10.)

The Requester contends that this provision would prevent a bank from using information it has obtained to identify customer needs. The Requester further contends that this provision would hurt third party marketing

programs as well as bank-owned agencies with dedicated agents and "platform programs," and damage marketing and sales techniques such as remote or direct marketing and retail-face-to-face programs.

The Requester contends that section 10 of the FIISA is not substantially the same as and is more burdensome and restrictive than Safe Harbor (vi) and would prevent or significantly interfere with a financial institution's ability to exercise its insurance powers.

#### *Insurance in Connection With a Loan*

Section 11 of the FIISA generally requires that loan and insurance applications be completed independently and through separate documents. Specifically, section 11 provides that:

(a) If insurance is required as a condition of obtaining a loan, the credit and insurance transactions shall be completed independently and through separate documents.

(b) A loan for premiums on required insurance shall not be included in the primary credit without the written consent of the customer.

#### **(R.I. Gen. Laws 27-58-11.)**

The Requester contends that the requirement that loan and insurance transactions be completed "independently" as well as through separate documents will inconvenience both the applicant and the financial institution involved in the two transactions by requiring the applicant to make a separate trip to the bank, complete a separate set of documents, and meet with more than one employee of the bank. The Requester contends that this requirement is particularly burdensome when coupled with other requirements contained in the FIISA, such as the requirements governing physical location of insurance activities and sales force.

The Requester contends that this provision is not protected by any of the Safe Harbors. The Requester asserts that although Safe Harbor (xi) protects State laws requiring that credit and insurance transactions be completed through separate documents, the Safe Harbor does not protect States laws that require that the transactions be completed "independently." Thus, the Requester contends that this provision is not protected by any of the Safe Harbors and would prevent or significantly interfere with the ability of a financial institution to exercise its insurance powers.

#### *Physical Separation of Insurance Activities*

Section 12 of the FIISA, and its implementing regulation, generally permits financial institutions to solicit and sell insurance only from an office

physically separated from the banking activities of the institution. Specifically, section 12 provides that:

The place of solicitation or sale of insurance by any financial institution shall be from an office physically separated from the banking activities of the institution. Physical separation shall not be defined as a separate building. The commissioner shall have the authority to promulgate rules to implement this section pursuant to § 27-58-4.

#### **(R.I. Gen. Laws 27-58-12.)**

The Requester contends that this requirement would prevent a trained and licensed bank employee from soliciting a sale of a life insurance product if the employee (1) was also a loan officer; (2) had an office not physically separated from core banking activities; (3) had just accepted a loan application from the customer; or (4) had learned of the customer's need for the product as a result of reading his loan application. Thus, the Requester contends that none of the Safe Harbors protects this requirement from preemption, and that these limitations would prevent or significantly interfere with the financial institution's ability to exercise its authority to sell insurance. The Requester also contends that this requirement would impact small institutions most severely.

#### *Regulations Implementing the FIISA Provisions*

The Requester also asks the OCC to address whether or not Federal law would preempt the regulations implementing the State statutory provisions for the same reasons described above.<sup>6</sup> In addition, the Requester also specifically asks the OCC to opine on whether a regulatory provision that would confer on the Rhode Island Department of Business Regulation authority to examine the insurance activities of the bank for compliance with the Rhode Island implementing regulations conflicts with Federal law.<sup>7</sup> The OCC invites comments on this provisions and all the implementing regulations, including how they interact with the FIISA provisions.

#### **Request for Comments**

The OCC requests comments on the issues described above.

Dated: September 14, 2000.

**John D. Hawke, Jr.,**  
*Comptroller of the Currency.*

#### **Request for Comments**

The OCC requests comments on the issues described above.

<sup>6</sup>R.I. Code R. 02-030-090 (2000).

<sup>7</sup>R.I. Code R. 02-030-090, § 3 (2000).

Dated: September 14, 2000.

**John D. Hawke, Jr.,**

*Comptroller of the Currency.*

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**BILLING CODE 4810-33-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 8854

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8854, Expatriation Information Statement.

**DATES:** Written comments should be received on or before November 21, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622-3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

#### SUPPLEMENTARY INFORMATION:

*Title:* Expatriation Information Statement OMB Number: 1545-1567.

*Form Number:* Form 8854.

*Abstract:* Internal Revenue Code Section 6039G requires persons who lose U.S. citizenship to provide information concerning citizenship, income tax liability, net worth, and net assets. Form 8854 is used to report this information.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents—Part I:* 10,000.

*Estimated Number of Respondents—Parts I and II:* 1,000.

*Estimated Time Per Respondent—Part I:* 1 hr., 46 min.

*Estimated Time Per Respondent—Parts I and II:* 7 hr., 8 min.

*Estimated Total Annual Burden Hours:* 23,060.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 18, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

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**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 8818

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8818, Optional Form To Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989.

**DATES:** Written comments should be received on or before November 21, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622-3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

#### SUPPLEMENTARY INFORMATION:

*Title:* Optional Form To Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989.

*OMB Number:* 1545-1151.

*Form Number:* Form 8818.

*Abstract:* Under Internal Revenue Code section 135, if an individual redeems U.S. savings bonds issued after 1989 and pays qualified higher education expenses during the year, the interest on the bonds is excludable from income. Form 8818 can be used to keep a record of the bonds cashed so that the taxpayer can claim the proper interest exclusion.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 50,000.

*Estimated Time Per Respondent:* 38 min.

*Estimated Total Annual Burden Hours:* 32,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will