

insurance activities authorized by Congress.³²

B. The Massachusetts Restrictions on the Timing of an Insurance Solicitation

The Massachusetts statute and regulations also prohibit banks from telling loan applicants that insurance products are available through the bank until the application is approved and, in the case of a loan secured by a mortgage on real property, until after the customer has accepted the bank's written commitment to extend credit (the Waiting Period Requirement).³³ There are no limits in federal law that impose conditions on a national bank's insurance activities comparable to the limits imposed by the Waiting Period Requirement. Moreover, as the Massachusetts Director acknowledged in her letter,³⁴ there are no GLBA Safe Harbors that would protect this requirement. Accordingly, the Waiting Period Requirement must be analyzed under the standards for preemption set forth in *Barnett* and made applicable to national banks' insurance activities by section 104(d)(2).

In our opinion, the Waiting Period Requirement is preempted under those standards because of the requirement's impact on the ability of a depository

institution to engage in insurance sales, solicitation, and cross-marketing activity. The Massachusetts Director asserts that the Waiting Period Requirement does not "significantly interfere" with the ability of a bank to sell insurance because the requirement merely governs *when* the bank may solicit consumers.³⁵ That characterization substantially understates the effect of the requirement on a bank's ability to cross-market its products, however. As we stated in the West Virginia Letter, based on our experience, restricting the timing of an insurance solicitation also restricts "the methods by which a bank may solicit an insurance sale from a customer and thus substantively affects the bank's ability to solicit and sell insurance products."³⁶ The Massachusetts Waiting Period Requirement, like the timing provision considered in the West Virginia letter, would preclude national banks from availing themselves of a prime opportunity to cross-market insurance products, that is, when the transaction is still in process.

It also would make subsequent cross-marketing much more costly by requiring banks to develop databases to keep track of customers that have loans pending with the bank. Banks would have to institute methods of communicating this information to its sales force and of apprising the sales force of changes as they occur. The Waiting Period Requirement also would significantly hamper a bank's mass mailing efforts since bank staff would be required to remove from the mass mailing those individuals who have loans pending with the bank. The cost of developing and maintaining these procedures would impair the bank's ability to engage in insurance activities and frustrate its ability to pursue particular sales activities.³⁷

³² The Massachusetts Director also asserted in her letter that the Referral Prohibition and Referral Fee Prohibition should not be preempted because the provisions are "consumer protective in nature and guard against inappropriate product recommendations, high pressure sales tactics and the sale of insurance products on the basis of compensation to the seller rather than the benefit to consumers." Director's Letter, *supra* note 29, at 2. As explained by the district court in the *Duryee* case, however, "[w]here state and federal laws are inconsistent, the state law is pre-empted even if it was enacted by the state to protect its citizens or consumers." *Duryee*, 55 F.Supp. at 802. Agreeing with this conclusion, the Sixth Circuit stated that "the fact that the state legislature enacted the [state law at issue] to protect general insurance agents and consumers does not, for that reason alone, preclude federal preemption." *Duryee*, 270 F.3d at 408. See also *Franklin National Bank*, 347 U.S. at 378.

³³ **Mass. Gen. L.** 167F, § 2A(b)(4)(ii) and (iii), 209 CMR § 49.06(5)(b) and (c), and 211 CMR § 142.06(2) and (3)(b). Specifically, § 142.06(2) provides:

No solicitation for the sale of insurance in conjunction with any application for the extension of credit shall be permitted until said application has been approved, such approval and the disclosures required by 211 CMR 142.06 have been provided to said applicant in writing, and the receipt of both said approval and disclosures has been acknowledged in writing by said applicant. . . .

Section 142.06(3)(b) provides:

(3) In the instance of an application to a bank for an extension of credit to be secured by a mortgage on real estate and in which it is necessary for the applicant to obtain a policy insuring said premises against loss and designating such bank as loss payee:

* * * (b) such bank shall not, in any manner, solicit the applicant to purchase the required insurance from the bank until said commitment has been accepted by the applicant . . .

³⁴ Pursuant to the Director's Letter, the Director's acknowledgement of this point "shall [not] be construed in any way to waive or concede any issues . . . that may arise in any other proceeding regarding the Massachusetts bank insurance laws." Director's Letter, *supra* note 29, at 3.

³⁵ We note that other Federal regulations contemplate, and in some instances require, that insurance solicitations occur *prior* to loan approval. Under the Truth-in-Lending-Act regulations, a lender must disclose to a consumer the finance charge, which in some instances includes insurance costs, associated with a loan. See 12 CFR 226.4(d) and 226.18. The estimated finance charge disclosure in connection with a residential mortgage loan subject to the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 *et seq.*, typically is required prior to loan approval. See 12 CFR 226.19(a) (disclosure must be made prior to the loan's consummation or mailed within three days of receipt of the consumer's application, whichever is earlier). Similarly, a lender must make the insurance disclosures required by the GLBA Section 305 regulations "at the time the consumer applies for an extension of credit in connection with which an insurance product is solicited, offered or sold." See 12 CFR 14.40(c)(1).

³⁶ West Virginia Letter at 25.

³⁷ The Massachusetts Director argues that preemption of the Waiting Period Requirement would interfere with Massachusetts insurance laws and other consumer protection laws that prohibit "tying." We have not been asked to consider these other Massachusetts laws in this letter. We note, however, that national banks are required to comply with the significant tying restrictions imposed by federal law. Twelve U.S.C. 1972 generally prohibits a bank from extending credit, leasing or selling property, furnishing services, or fixing or varying prices of these transactions on the condition or requirement that the customer obtain additional credit, property, or service from the bank, subject to certain exceptions. Nothing in this opinion

IV. Conclusions

The Massachusetts Referral and Referral Fee Prohibitions frustrate the ability of national banks to cross-market insurance products, an authority specifically referenced in section 104 of GLBA and recognized by the Supreme Court as essential to the conduct of modern business. The Massachusetts Waiting Period Requirement impermissibly restricts the methods by which a bank may solicit an insurance sale from a customer and would also significantly interfere with the cross-marketing of insurance products. It is therefore our opinion that the Massachusetts Referral Prohibition, the Massachusetts Referral Fee Prohibition, and the Massachusetts Waiting Period Requirement would be preempted under the *Barnett* standards incorporated in GLBA section 104(d)(2).

Sincerely,

Julie L. Williams,

First Senior Deputy Comptroller and Chief Counsel.

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BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Declaration for Unaccompanied Articles

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Declaration for Unaccompanied Articles. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C,

would allow national banks to engage in impermissible tying under section 1972. Moreover, section 305 of the GLBA requires that the OCC's insurance consumer protection regulations contain anti-tying provisions consistent with section 1972. See 12 CFR 14.30(a).

Washington, DC 20229, Tel. (202) 927-1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting information concerning the following information collection:

Title: Declaration for Unaccompanied Articles.

OMB Number: 1515-0087.

Form Number: Customs form 255.

Abstract: This collection is completed by each arriving passenger for each parcel or container which is being sent from an Insular Possession at a later date. This declaration allows that traveler to claim their appropriate allowable exemption.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 7,500.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 1,250.

Estimated Total Annualized Cost on the Public: \$18,750.

Dated: March 15, 2002.

Tracey Denning,

Team Leader, Information Services Group.

[FR Doc. 02-6877 Filed 3-21-02; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Record of Vessel Foreign Repair or Equipment Purchase

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Record of Vessel Foreign Repair or Equipment Purchase. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927-1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting

comments concerning the following information collection:

Title: Record of Vessel Foreign Repair or Equipment Purchase.

OMB Number: 1515-0082.

Form Number: Customs form 226.

Abstract: This collection is required to ensure the collection of revenue (duty) required on all equipment, parts, or materials purchased, and repairs made to U.S. Flag vessels outside the United States.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 1,500.

Estimated Total Annualized Cost on the Public: \$30,000.

Dated: March 15, 2002.

Tracey Denning,

Information Services Group.

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BILLING CODE 4820-02-P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request Report of Loss, Detention, or Accident by Bonded Carrier, Cartman, Lighterman, Foreign Trade Zone Operator, or Centralized Examination Station Operator

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Report of Loss, Detention, or Accident by Bonded Carrier, Cartman, Lighterman, Foreign Trade Zone Operator, or Centralized Examination Station Operator. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning,