

Dated: February 1, 1996.

Nancy P. Michaleski,
Assistant Director, Legislative & Regulatory Activities Division.
[FR Doc. 96-2459 Filed 2-5-96; 8:45 am]
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[Docket No. 96-01]

Preemption Determination

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

ACTION: Notice and request for comments.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing for comment a written request for OCC reconsideration of its prior determination that Federal law preempts the application of a New Jersey law that requires all depositories in the State which offer regular checking accounts to offer low-cost or consumer checking accounts. It is intended to provide interested persons with an opportunity to provide comments on the preemption request prior to the OCC's issuance of a final opinion letter responding to the request.

DATES: Comments should be submitted on or before April 8, 1996.

ADDRESSES: Comments should be sent to the Communications Division, 250 E Street, SW., Third Floor, Washington, DC 20219. Attention: Docket No. 96-01. Comments will be available for inspection and photocopying at the same location. Appointments for inspection of comments can be made by calling (202) 874-4700. In addition, comments may be sent by facsimile transmission to FAX number 202-874-5274 or by electronic mail to REG.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Susan L. Blankenheimer, Senior Attorney, Bank Activities and Structure Division (202) 874-5300.

SUPPLEMENTARY INFORMATION:

Background

Section 114 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (section 114), Pub. L. 103-328 (12 U.S.C. 43), generally requires the OCC to publish in the Federal Register a descriptive notice of certain requests that the OCC receives for preemption determinations. The OCC must publish this notice before it issues any opinion letter or interpretive rule concluding that Federal law preempts the application to a national bank of a State law in the areas of community reinvestment, consumer protection, fair lending, or the

establishment of intrastate branches (the four designated areas). The OCC must give interested persons at least 30 days to submit written comments, and must consider the comments in developing the final opinion letter or interpretive rule. The OCC must publish in the Federal Register any final opinion letter or interpretive rule that concludes that Federal law preempts State law in any one of the four designated areas.

Section 114 also provides certain exceptions to the Federal Register publication requirement, however. Notice or comment is not required where the opinion letter or interpretive rule: (1) addresses an issue essentially identical to one previously resolved by the courts or on which the agency has previously issued an opinion letter or interpretive rule; (2) responds to a request that contains no significant legal basis on which to make a preemption determination; or (3) is prepared for use in judicial proceedings, by Congress, or for intragovernmental use.

While it is not clear that the standards of section 114 require that the OCC apply the section 114 notice procedures to this request for reconsideration, the OCC has elected to do so because of the concern raised during Congressional consideration of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 about the particular OCC preemption opinion at issue. See H.R. CONF. REP. NO. 103-651, 103d Cong., 2d Sess. 53-54 (1994).

Specific Request for OCC Preemption Determination

On November 13, 1995, the State of New Jersey Department of Banking (Department) requested that the OCC reconsider whether New Jersey's Consumer Checking Account Act (NJCCAA), codified at N.J. Stat. Ann. section 17:16N-1 *et seq.*, is preempted by Federal law. In a 1992 letter to the Department, the OCC concluded that the NJCCAA and its implementing regulation, N.J. Admin. Code section 3:1-19.4, are preempted by Federal law and that national banks doing business in New Jersey are not required to comply with any of the provisions of the NJCCAA or its implementing regulation. See Interpretive Letter No. 572 (January 15, 1992), reprinted in [1991-1992 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,342.

The NJCCAA requires every depository institution that maintains regular checking accounts in New Jersey to make available to consumers a New Jersey Consumer Checking Account at all offices of that institution where regular checking accounts are offered or available. N.J. Stat. Ann. section

17:16N-3.a.¹ The NJCCAA does not require a depository institution to offer a New Jersey Consumer Checking Account at a cost below its actual cost of providing the account. The NJCCAA's implementing regulation sets forth procedures for closing or refusing to open a New Jersey Consumer Checking Account if a depository institution's fees and revenues derived from the account are less than its costs. N.J. Admin. Code section 3:1-19.4.

The principal features of a New Jersey Consumer Checking Account, as set forth in the regulation (N.J. Admin. Code § 3:1-19.2(a)), include the following:

1. The initial deposit amount necessary to open the account is \$50.00 and the minimum balance necessary to maintain the account is \$1.00;

2. The customer may make at least eight free withdrawals from the account by check within a periodic cycle (for each transaction in excess of this number, the regulation imposes a maximum charge of \$0.50);

3. The customer may make an unlimited number of free deposits and withdrawals using deposit and withdrawal slips;

4. The amount that may be charged per periodic cycle for maintaining the account may not exceed \$3.00 per periodic cycle; and

5. A customer may not be charged for printing checks an amount greater than that charged for regular checking account holders. In addition, the depository institution may charge fees for automated teller machine (ATM) usage and banking services if the fees are the same as those for regular checking account holders for the same services.

The NJCCAA further provides, in general, that a depository institution may not discriminate against the holder of a New Jersey Consumer Checking Account by furnishing fewer mail or electronic banking services, or assessing higher fees, compared to the services furnished to or fees assessed against regular checking account holders. NJCCAA section 3.f. Section 3.h of the NJCCAA and section 3:1-19.4(a) of the regulation set forth the limited conditions (including fraud and a record of unpaid checks) under which a depository institution may close or refuse to open a New Jersey Consumer Checking Account for a customer.

The NJCCAA also prohibits a depository institution from requiring that a holder of a New Jersey Consumer

¹ The term depository institution is defined to include national banks doing business in New Jersey. *Id.* at section 2.

Checking Account have another account or a credit card at that or any other depository institution as a condition to opening or maintaining the New Jersey Consumer Checking Account. NJCCAA section 3.i. Section 5 of the NJCCAA prescribes requirements for providing public notice of the availability and features of a depository institution's New Jersey Consumer Checking Account. Section 6 of the NJCCAA provides a private right of action for violations of the NJCCAA, including injunctive relief, and monetary damages. Finally, section 7 of the NJCCAA gives the New Jersey Commissioner of Banking administrative enforcement powers over institutions which fail to comply with the NJCCAA or any of the Commissioner's regulations or orders thereunder. These powers include the authority to issue a cease and desist order and assess a civil money penalty.

The purpose of the Bank Enterprise Act is to provide Federally insured depository institutions (including national banks) with an incentive (e.g., a reduced Federal deposit insurance rate for deposits attributable to lifeline accounts) to offer lifeline accounts,² and to make loans and provide other financial assistance in distressed communities. The term lifeline account is defined in section 232 of the BEA (12 U.S.C. 1834) as a transaction account which meets certain minimum requirements. The BEA does not, however, require depository institutions to offer these lifeline accounts; that decision is left to individual depository institutions.

The Interpretive Letter No. 572 noted that the factors established in section 232 of the BEA (12 U.S.C. 1834) for the purpose of determining whether a transaction account qualifies as a lifeline account eligible for reduced Federal deposit insurance assessment rate are virtually identical to those listed in the NJCCAA for the purpose of determining whether an account qualifies as a New Jersey Consumer Checking Account. The Letter concluded, among other things, that

² Appropriations are required, however, to implement this and other provisions of the BEA. Funds for the BEA have not yet been appropriated, and the only funding that has been made available to date is for a program based on the BEA that is administered by the Administrator of the Community Development Financial Institutions Fund (Administrator). See Appropriations Act for FY 1995, Pub. L. No. 104-19, 109 Stat. 237 (July 27, 1995). The Administrator is precluded by law, however, from using the amount of the deposit insurance assessment as an incentive to participate in the program. Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. No. 103-325, section 114, 108 Stat. 2179 (Sept. 23, 1994) (12 U.S.C. 4713).

since the NJCCAA requires Federally insured depository institutions doing business in New Jersey to offer lifeline accounts, the NJCCAA is in direct conflict with a Federal statute, the BEA, set forth in Title II, Subtitle C of the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. No. 102-242, 105 Stat. 2236 (FDICIA), (12 U.S.C. 1834), which expressly makes the offering of such accounts voluntary. Although Interpretive Letter No. 572 recognized that both Congress and the New Jersey legislature saw the benefits of widespread use of lifeline accounts, it concluded that under Federal preemption principles, the State's method must yield in the face of a directly contrary Federal treatment of this issue.

The Department's position is that the BEA does not preempt the NJCCAA, since the two laws are not in conflict. The Department states that the philosophy of the NJCCAA, to provide basic checking services to those in need of them, is consistent with that of the BEA. The Department asserts that it is unlikely that Congress intended to preclude individual states from requiring depository institutions to provide basic checking services to those in need. The Department also states that Interpretive Letter No. 572 did not fully consider applicable case law in the area of preemption, citing for example, the case of *Best v. United States National Bank of Oregon*, 303 Or. 557, 739 P. 2d 554 (1987).

Request for Comments

The OCC requests comments on all aspects of the request for reconsideration of OCC's prior determination that the application of New Jersey law to national banks is preempted by Federal law. Comments should be submitted to the docket number and address indicated in the ADDRESSES paragraph of this document. The OCC will carefully consider any comments received and publish its final determination in response to the request.

Dated: January 22, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 96-2387 Filed 2-5-96; 8:45 am]

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Bureau of the Public Debt

Proposed Agency Information Collection Activities: Comment Request

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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Payroll Savings Report.

DATES: Written comments should be received on or before April 8, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Ott, 200 Third Street, Parkersburg, WV 26106-1328.

FOR FURTHER INFORMATION CONTACT: Vicki S. Ott, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328, (304) 480-6553.

SUPPLEMENTARY INFORMATION:

Title: Payroll Savings Report.
OMB Number: 1535-0001.

Form Number: SB-60 and SB-60A.

Abstract: The information is requested as a measure of the effectiveness of the payroll savings program.

Current Actions: None.

Type of Review: Extension.

Affected Public: Businesses.

Estimated Number of Respondents: 25,910.

Estimated Time Per Respondent: 41 minutes.

Estimated Total Annual Burden Hours: 17,871.

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. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dated: January 31, 1996.

Vicki S. Ott,

Manager, Forms Management Branch.

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