

Estimated Burden Hours Per Respondent/Recordkeeper: 5,179 hours (or approximately two (2) minutes per on-line electronically-filed return).

Frequency of Response: On occasion.

Estimated Total Reporting/Recording Burden: 72,509 hours.

OMB Number: 1545-1667.

Revenue Procedure Number: Revenue Procedure 99-50.

Type of Review: Extension.

Title: Combined Information Reporting.

Description: The revenue procedure permits combined information reporting by a successor "business entity" (i.e., a corporation, partnership, or sole proprietorship) in certain situations following a merger or an acquisition. The successor must file a statement with the Internal Revenue Service indicating what forms are being filed on a combined basis.

Respondents: Business or other for-profit, not-for-profit institution, farms.

Estimated Number of Respondents: 6,000.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 500 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.
[FR Doc. 00-6733 Filed 3-17-00; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 00-08]

Preemption Determination

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

ACTION: Notice.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing its response to a written request for the OCC's determination of whether federal law preempts the application of Pennsylvania laws regulating auctioneers. The OCC has determined that, if the state law applied, it would be preempted under federal law.

FOR FURTHER INFORMATION CONTACT: Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874-5090.

SUPPLEMENTARY INFORMATION: A national bank headquartered in Pennsylvania (the Bank) uses an auction format to market and sell certificates of deposit (CDs) over the Internet. The Bank's Internet website permits visitors to link to a site on which the Bank offers potential customers the opportunity to purchase CDs that it issues and that are priced through an online auction process. Interested parties submit bids equal to or below the maximum annual percentage yield that the Bank will pay on the CDs, with the winning bidders being those submitting the lowest bids. The winning bidders then complete an application to purchase the CDs pursuant to the terms and conditions established by the Bank as posted on the auction site.

A Pennsylvania statute¹ requires that auctioneers be licensed and subjects them to examination and inspection by the state. It defines an "auction" as the offer to sell property to the members of an audience congregated for the purpose of making bids for the purchase of property in an effort by the auctioneer or apprentice auctioneer to advance the amount of the bids to obtain the highest or most favorable offer.²

Auctioneers are required to keep detailed records of sales of property at auction.³ They are subject to civil and criminal penalties if they fail to obtain a license.⁴ The Pennsylvania law permits either individuals or corporations to be auctioneers, thereby leading the Bank to conclude that a corporation that employs an individual auctioneer may have to be licensed both as an auctioneer and as an auction company.

The Bank has submitted a written request for the OCC's opinion on whether federal law preempts the application of the Pennsylvania statute to the Bank's online auction program. The Bank asserted that federal law authorizes it to conduct the online auction program, and that the licensing, recordkeeping, and examination requirements in the Pennsylvania auction statute impermissibly condition and burden the exercise of this federal authority. The Bank relies on the express authority of 12 U.S.C. 24(Seventh) to receive deposits, on the incidental powers clause of § 24(Seventh), and on the OCC's

regulation at 12 CFR 7.1019, which authorizes a national bank to do electronically that which it may do by other means. The Bank concludes that the state law conflicts with these federal laws and violates the OCC's exclusive visitorial power to examine and supervise national banks.

Section 114 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994⁵ requires the OCC to publish notice in the **Federal Register** before issuing a final written opinion about the preemptive effect of federal law in four specified areas: Community reinvestment, consumer protection, fair lending, or the establishment of interstate branches. Section 114 also requires the OCC to publish any final opinion letter in which the OCC concludes that federal law preempts a state law in one of the four specified areas. Although it is not clear that the Pennsylvania statute under review falls within one of the four areas covered by section 114, the OCC nevertheless published a notice of the request in the **Federal Register** in light of the novelty of the question presented (namely, the applicability of state law to national banks that provide traditional financial services through electronic means),⁶ and is publishing its response to the preemption request as an appendix to this notice.

As is explained in greater detail in the response, the OCC agrees that the activities in question—receiving deposits, marketing, and using electronic means to engage in permissible activities—are authorized by federal law. The OCC also agrees that the state law, if it is applied to the Bank's online auction program, would be preempted, because it would limit or condition the ability of the Bank to exercise its powers under federal law, would frustrate the purposes for which the national banking system was established, and would violate the OCC's exclusive visitorial powers.

Dated: March 14, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

Appendix

March 7, 2000.

Thomas P. Vartanian,
Fried, Frank, Harris, Shriver & Jacobson
1001 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20004-7008
Re: *Online Deposit Program*

Dear Mr. Vartanian: This responds to your letter dated December 10, 1999 (the

¹ 63 Pa. Stat. section 734 *et seq.*

² *Id.* at § 734.2.

³ *Id.* at § 734.16.

⁴ *Id.* at § 734.29.

⁵ Pub. L. 103-328, sec. 114, 108 Stat. 2338, 2366-68 (1994), codified at 12 U.S.C. 43.

⁶ 65 FR 2455 (January 14, 2000).

“Letter”), in which you requested confirmation by the Office of the Comptroller of the Currency of your view that federal law preempts a Pennsylvania statute regulating the conduct of auctions under the circumstances described in your letter. For the reasons discussed below, we conclude that federal law would preempt such a state law if it were found to apply to your client’s online auction program.

Background

The bank in question (“Bank”) is a national bank headquartered in Pennsylvania with offices in several other states. It markets certificates of deposit (“CDs”) over the Bank’s website on the Internet through an online auction program. The rate paid on those CDs is determined by bids submitted by people who participate in the auction. Each auction has a starting and ending time and identifies the dollar face amount, the term, the quantity, and the maximum annual percentage yield (“APY”) of the CDs that are being offered. If, for example, the Bank offers 100 CDs at a stated maturity and face amount with a maximum APY of 8%, the 100 bids with the lowest APY equal to or below 8% will be selected as the winning bidders.

You note that Pennsylvania has a statute governing auctions, and that the statute defines “auction” as—

[t]he offer to sell property by an auctioneer or apprentice auctioneer to the members of an audience congregated for the purpose of making bids for the purchase of property in an effort by the auctioneer or apprentice auctioneer to advance the amount of the bids to obtain the highest or most favorable offer.

63 Pa. Stat. § 734.2 (1998). This statute requires auctioneers (which includes both individuals and corporations) to be licensed by the Pennsylvania Board of Auctioneer Examiners (*id.* at § 734.3), and contemplates the payment of a license fee in connection with the filing of an application to obtain a license (*id.* at § 734.6). Under the statute, Pennsylvania auctioneers are required to keep records of sales of property at auction (*id.* at § 734.16) and are subject to examination by the state (*id.* at § 734.20). Auctioneers are required to pay examination fees which, together with licensing application fees and other fees imposed on auctioneers, must be sufficient to pay for whatever enforcement efforts are required under the Pennsylvania law (*id.* at § 734.6(b)). You suggest that these statutes may apply to the Bank’s online auction

program, and you request confirmation that federal law would preempt the state laws.

The OCC published a notice of your request in the **Federal Register**,¹ inviting interested parties to comment on whether federal law preempts the Pennsylvania auctioneer laws. Four comments were received in response to the notice. Three commenters opined that federal law does preempt the type of state law in question. Each of these commenters cited the authority of national banks under 12 U.S.C. § 24(Seventh) to engage in deposit-taking activities and other activities necessary to carry on the business of banking. Each also noted that federal law preempts state laws that purport to regulate an activity that is authorized by federal law. The fourth comment was submitted by the Chief Counsel of the Pennsylvania Department of Banking (Banking Department), who, after speaking with counsel to the Pennsylvania Board of State Auctioneers (the Board), stated that, in the view of the Board staff, the Pennsylvania auction laws do not apply to the Bank’s online auction program. While this comment by the Banking Department, representing the views of the staff of the Board, might settle the issue in Pennsylvania for the time being, we have concluded, in light of the non-binding nature of those staff views, that it still would be useful to respond to the question you posed in order to provide an advisory opinion on the application of preemption principles when banking activities, such as the activity in question, are conducted over the Internet.

Analysis

Permissibility of the Activity

The threshold question in any preemption analysis is whether the activities in question are permissible for a national bank under federal law. If they are not, then there is no preemption issue.

There are essentially three components to the Bank’s activities

¹ 65 Fed. Reg. 2455 (January 14, 2000) (the Notice). As stated in the Notice, section 114 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Pub. L. 103-328, sec. 114, 108 Stat. 2338, 2366-68 (1994), codified at 12 U.S.C. § 43) requires the OCC to publish notice in the **Federal Register** before issuing a final written opinion about the preemptive effect of federal law in the areas of community reinvestment, consumer protection, fair lending, and the establishment of interstate branches. While it is not clear that the Pennsylvania statutes in question fall within one of these four areas, the OCC decided to invite comments on the issues raised in your letter given the novelty of addressing preemption in the context of national banks providing traditional financial services through electronic means.

here. First, the Bank is engaging in an authorized banking activity—deposit-taking. Second, it is marketing one of its deposit products. Third, it is using the Internet to conduct these deposit-taking and marketing activities. Each of these activities is permissible under 12 U.S.C. 24(Seventh).

Section 24(Seventh) specifically authorizes national banks to receive deposits. Thus, a national bank need look no further than the express language of the statute for authorization to accept deposits.

Section 24(Seventh) also authorizes national banks to engage in the more general “business of banking” and activities incidental thereto. The Supreme Court has made clear that the “business of banking” authorized by section 24(Seventh) is a broad, flexible concept that allows the National Bank Act to adapt to changing times. *See NationsBank of North Carolina, N.A. v. Variable Annuity Life Ins. Corp.*, 513 U.S. 251, 258, n.2 (1995) (“We expressly hold that the “business of banking” is not limited to the enumerated powers in section 24 Seventh and that the Comptroller therefore has discretion to authorize activities beyond those specifically enumerated.”). An activity will be deemed “incidental” to the business of banking if it is “convenient or useful in connection with the performance of” a power authorized under federal law. *Arnold Tours, Inc. v. Camp*, 472 F.2d 427, 432 (1st Cir. 1972). Clearly, the authority under section 24(Seventh) is sufficiently broad to permit a national bank to market its products and services. *See Franklin National Bank v. New York*, 347 U.S. 373, 377 (1954).

Finally, the OCC has clearly established that a permissible activity is equally authorized regardless of whether it is conducted in a traditional manner or through an electronic medium. See 12 CFR 7.1019 (“A national bank may perform, provide, or deliver through electronic means and facilities any activity, function, product, or service that it is otherwise authorized to perform, provide, or deliver.”).

Thus, each of the activities that together comprise the Bank’s online auction program is permissible under well-settled authority.

Preemptive Effect of Federal Law

As previously noted, at a staff level, the Board has indicated that its auction laws would not apply to the Bank’s online auction program. However, given the unique nature of the Internet that enables the Bank to offer the online auction program in every state simultaneously and the possible

application of other laws in other jurisdictions,² and in view of the non-binding nature of the communication of the staff's views, we believe it is appropriate to provide guidance on the preemptive effect of federal law in the context of state auction laws that are found to apply to auctions conducted over the Internet.³

We believe that a court likely would find that federal law preempts laws of the sort adopted by Pennsylvania, assuming they are found to apply to a national bank's online activities, because they would conflict with federal law authorizing the Bank to engage in the activities in question and they would violate the OCC's exclusive visitorial powers over national banks. These points are addressed in more detail below, following a brief summary of the law governing preemption and the OCC's visitorial powers.

Preemption and Visitorial Powers

When the federal government acts within the sphere of authority conferred upon it by the Constitution, federal law is paramount over, and may preempt, state law. U.S. Const. art. VI, cl. 2 (the Supremacy Clause); *Cohen v. Virginia*, 19 U.S. (6 Wheat.) 264, 414 (1821) (Marshall, C.J.). Federal authority over national banks stems from several constitutional sources, including the Necessary and Proper Clause and the

Commerce Clause of the United States Constitution. U.S. Const. art. I, § 8, cl.3, cl. 18; *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 409 (1819).

The United States Supreme Court has identified several bases for federal preemption of state law. First, Congress may expressly state that it intends to preempt state law. *E.g.*, *Jones v. Rath Packing Co.*, 430 U.S. 519 (1977). Second, a federal statute may create a scheme of federal regulation "so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it." *Rice v. Norman Williams Co.*, 458 U.S. 654, 659 (1982). Third, the state law may conflict with a federal law. See, *e.g.*, *Franklin National Bank*, *supra*; *Davis v. Elmira Savings Bank*, 161 U.S. 275 (1896). In elaborating on this third test, the Supreme Court has stated—

federal law may be in "irreconcilable conflict" with state law. *Rice v. Norman Williams Co.*, 458 U.S. 654, 659 (1982). Compliance with both statutes, for example, may be a "physical impossibility," *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–143 (1963); or, the state law may "stan[d] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

Barnett Bank of Marion County v. Nelson, 517 U.S. 25, 31 (1996). The Court in *Barnett* went on to state that—

In defining the pre-emptive scope of statutes and regulations granting a power to national banks, these cases [*i.e.*, national bank preemption cases] take the view that normally Congress would not want States to forbid, or to impair significantly, the exercise of a power that Congress explicitly granted. To say this is not to deprive States of the power to regulate national banks, where * * * doing so does not prevent or significantly interfere with the national bank's exercise of its powers.

517 U.S. at 33.

A conflict between a state law and federal law need not be complete in order for federal law to have preemptive effect. If a state law places limits on an unrestricted grant of authority under federal law, the state law will be preempted. See, *e.g.*, *New York Bankers Association, Inc. v. Levin*, 999 F. Supp. 716 (W.D.N.Y. 1998). Moreover, federal law preempts not only state laws that purport to prohibit a national bank from engaging in an activity permissible under federal law but also state laws that condition the exercise by a national bank of its express or incidental powers. As stated in *Barnett*,

* * * where Congress has not expressly conditioned the grant of "power" upon a grant of state permission, the Court has

ordinarily found that no such condition applies. In *Franklin Nat. Bank*, the Court made this point explicit. It held that Congress did not intend to subject national banks' power to local restrictions, because the federal power-granting statute there in question contained "no indication that Congress [so] intended * * * as it has done by express language in several other instances."

517 U.S. at 34 (citations omitted; emphasis in original).

When reviewing the application of state laws to national banks, the Supreme Court's analysis is informed by the unique purposes for which the national banking system was created. Through the national charter, Congress has established a banking system intended to be both nationwide in scope and uniform in character.⁴ As stated by the Supreme Court in *Easton v. Iowa*, 188 U.S. 220 (1903), federal legislation affecting national banks "has in view the erection of a system extending throughout the country, and independent, so far as the powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the states." *Id.* at 229. See also *Davis, supra*, at 283 ("This freedom from State control over a national bank's powers protects national banks from conflicting local laws unrelated to the purpose of providing the uniform, nationwide banking system that Congress intended."); *Farmers' & Merchants National Bank v. Dearing*, 91 U.S. 29, 33–34 (1875) ("National banks organized under [the National Bank A]ct are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end. * * * Being such means, brought into existence for this purpose, and intended to be so employed, the States can exercise no control over them, nor in any wise affect their operation, except in so far as Congress may see proper to permit. Any thing beyond this is "an abuse, because it is the usurpation of power which a

⁴ One of the original purposes of the national banking system was to foster a stable and unitary banking and financial system. The sponsors of the national system expected that State banks would cease to exist and national banks, centrally and uniformly regulated, would replace them. See, *e.g.*, B. Hammond, *Banks and Politics in America from the Revolution to the Civil War*, 724–34 (1957); P. Studenski & H. Krooss, *Financial History of the United States*, 154–55, 178–79 (1st ed. 1952); Hackley, *Our Baffling Banking System*, 52 Va. L. Rev. 565, 571–73 (1966). Subsequent developments led to the continuation of State banks. However, the original purpose that national banks would be uniformly and centrally governed continues.

² You note in your letter that laws similar to the Pennsylvania law have been adopted in other states. For instance, Kentucky requires a person seeking to be licensed as an auctioneer to serve two years as an apprentice and to pass an examination (Ky. Rev. Stat. § 330.070). Ohio requires an applicant to complete a course of study and serve an apprenticeship for at least twelve months during which time he or she must participate in at least twelve auctions (Ohio Rev. Code § 4707.09), and Pennsylvania requires a person to serve a two-year apprenticeship, pass an examination, and participate in at least 30 auctions (63 Pa. Stat. § 734.5). A licensed auctioneer in Pennsylvania may have only one apprentice at any one time, while in Ohio, a licensed auctioneer may have two apprentices. At least one state has passed an auction law that would purport to apply to online auctions. See the Illinois Auction License Act, Public Act 91–0603, effective January 1, 2000.

³ This letter assumes, solely for the sake of analysis, that a given state's laws would apply to the Bank's online auction program. We note, however, that the law governing "prescriptive" jurisdiction (*i.e.*, the jurisdiction to regulate conduct, as opposed to "procedural" jurisdiction, which is the ability to summon a party into a given court) in the context of commerce conducted over the Internet is not settled. For a discussion of some of the jurisdictional issues presented by Internet commerce, see the American Bar Association's Project on Internet Jurisdiction at <http://www.kentlaw.edu/cyberlaw/>. By assuming for the sake of the preemption analysis that a state's laws would apply to the Bank's online auction program, we are not expressing any views on the applicability of a particular state law purporting to regulate online auctions conducted by national banks.

single State cannot give.”) (citations omitted).

The Supreme Court has consistently relied on the special federal purpose of national banks as an important reason for concluding that national bank powers normally are not limited by state law. Congress created the national bank charter to serve the purpose of providing a uniform, nationwide banking system. Through national banks, Congress intended to promote the nationwide availability of private credit and other banking services vital to economic development and expansion. As stated by the Court in Davis, *supra*:

National banks are instrumentalities of the Federal government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt by a State to define their duties, or control the conduct of their affairs is absolutely void, wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation, or impairs the efficiency of these agencies of the Federal government to discharge the duties for the performance of which they were created. This freedom from State control over a national bank's powers protects national banks from conflicting local laws unrelated to the purpose of providing the uniform, nationwide banking system that Congress intended.

161 U.S. at 283. More recently, the Supreme Court, after quoting approvingly the language from Davis about national banks being instrumentalities of the federal government, went on to state that “[c]lose examination of the National Bank Act of 1864, its legislative history, and its historical context makes clear that, contrary to the suggestion of petitioners, Congress intended to facilitate what Representative Hooper termed a ‘national banking system.’” *Marquette National Bank v. First of Omaha Corp.*, 423 U.S. 299, 314–315 (1978) (citations omitted). See also *First National Bank of San Jose v. California*, 262 U.S. 366, 369 (1923) (FNB San Jose) (“[A]ny attempt by a state to define [national banks’] duties or control the conduct of their affairs is void, whenever it conflicts with the laws of the United States or frustrates the purposes of the national legislation, or impairs the efficiency of the bank to discharge the duties for which it was created.”).

Consistent with the goal of establishing a nationwide banking system, Congress vested the OCC with the authority to determine whether a national bank is engaging in permissible activities. Under 12 U.S.C. 484 and

other federal statutes (see, e.g., 12 U.S.C. 93, 481, and 1818), the OCC has exclusive visitorial powers over national banks except as otherwise expressly provided by federal law. *Guthrie v. Harkness*, 199 U.S. 148 (1905); *Bank One Texas, N.A. v. Patterson*, No. 3:93–CV–108–G (N.D. Tex. Sept. 9, 1994), *aff’d* 68 F.3d 469 (5th Cir. 1995). These powers include the right to examine a bank, inspect a bank’s books and records, regulate and supervise activities authorized or permitted pursuant to federal banking law, and enforce compliance with any applicable federal or state laws concerning those activities. 12 CFR 7.4000(a)(2). See also *First National Bank of Youngstown v. Hughes*, 6 F. 737, 740–41.

Application of Federal Law to State Statutes

State licensing laws such as the Pennsylvania auction law, to the extent that they are found to apply to the Bank’s online activities, present several potential conflicts with federal law.⁵

First, the state laws that require licensing by, and the payment of a fee to, a state would be preempted because they would “stan[d] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Hines*, 312 U.S. at 67. Clearly, Congress intended to permit national banks to engage in, among other things, deposit-taking activities when it enacted 12 U.S.C. 24(Seventh). Congress also intended that national banks would have available to them “all such incidental powers as shall be necessary to carry on the business of banking,” including the power to market the bank’s products and services. See *Franklin, supra*. The online auction program is simply another way to engage in these activities. To the extent that a state asserts the right to restrict or condition a national bank’s exercise of the federally granted powers, that state’s law will be preempted. *Barnett, supra*, at 34; *Franklin, supra*, at 378; *Bank of America National Trust & Savings Ass’n v. Lima*, 103 F. Supp. 916, 918, 920 (D. Mass. 1952) (exercise of national bank powers is not subject to state approval; states have no authority to require national banks to obtain a license to engage in an activity permitted to them by federal law.). See also OCC Interpr. Ltr. No. 866 (Oct. 8, 1999) (state law requirements that purport to preclude

national banks from soliciting trust business from customers located in states other than where the bank’s main office is located would be preempted); OCC Interpr. Ltr. No. 749 (Sept. 13, 1996) (state law requiring national banks to be licensed by the state to sell annuities would be preempted); OCC Interpr. Ltr. 644 (March 24, 1994) (state registration and fee requirements imposed on mortgage lenders would be preempted).⁶

Second, state regulation of the Bank’s online auction program would be inconsistent with the purpose of creating a uniform, nationwide banking system. The Internet presents financial institutions with the opportunity to offer banking products and services efficiently to anyone with access to the Internet. By so doing, the Internet greatly facilitates the operation of the nationwide banking system envisioned by Congress when it established the national bank charter. Supplanting the primary federal regulator’s supervision and regulation of an activity conducted nationwide would present a significant interference with the efficient operation of the national banking system.⁷

Finally, the application by a state of its auctioneer licensing laws would violate the exclusive visitorial authority vested in the OCC. As previously noted, only the OCC may determine whether a national bank is engaging in activities permissible under federal law. See, e.g., 12 U.S.C. 484; 12 CFR 7.4000(a)(2). A state law that purports to vest this authority in a state (by, for instance, applying licensing and qualification requirements to national banks⁸) is

⁶ We note that the exercise of permissible federal banking powers over the Internet may present preemption issues unique to the Internet context. There may be instances, beyond licensing and examination laws, where states would assert prescriptive jurisdiction (see footnote 3 for a description of “prescriptive jurisdiction”) over an activity performed via the Internet. If the debate over prescriptive jurisdiction is resolved in a way that subjects an entity engaged in commerce over the Internet to substantive requirements imposed by every state in the country, this could create a situation where the state laws collectively present such a significant impairment or interference with the activity that federal law would be found to preempt them. However, because we are faced in the instant situation with state licensing and examination laws that would be preempted according to well-established preemption principles, we need not address this issue here.

⁷ While the Internet is a medium of communication available both to state banks and national banks, this does not change the fact that the Internet facilitates the operation of the “uniform, nationwide banking system that Congress intended.” *Davis, supra*, 161 U.S. at 283.

⁸ Kentucky requires a person seeking to be licensed as an auctioneer to serve two years as an apprentice and to pass an examination (Ky. Rev. Stat. § 330.070). Ohio requires an applicant to complete a course of study and serve an apprenticeship for at least twelve months during

⁵ Because the activities in question do not involve the business of insurance, the unique preemption standard established under the McCarran-Ferguson Act is not at issue. 15 U.S.C. 1012. Nor are the recently enacted provisions of the Gramm-Leach-Bliley Act. Pub. L. 106–102, sec. 104 (to be codified at 15 U.S.C. 6701).

preempted by the OCC's exclusive visitorial authority.

Conclusion

If the Pennsylvania auction laws were to apply to the Bank's online auction program, we believe that federal law would preempt the state laws. We trust that this is responsive to your inquiry. Our conclusions are based on the facts and representations made in your letter. Any material change in facts or circumstances could affect the conclusions stated in this letter.

Sincerely,
Julie L. Williams,
First Senior Deputy Comptroller and Chief Counsel.

[FR Doc. 00-6865 Filed 3-17-00; 8:45 am]

BILLING CODE 4840-33-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is a correction to the notice published in the August 11, 1998 **Federal Register** and is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending June 30, 1998.

Last name	First name	Middle name
ABEGGLEN	JAMES	CHRISTIAN.
AIDA	MERIKO.	
AKIBA	TAKESHI.	
ALLEN-POLLOCK	BONNIE	SUE.
ARANTTA	MARIA	MARISA.
BOYCE	ALAN	ANDERSON.
BARSCH	MARIA	BENEDIKTA.
BRANN	PETER	SCOTT.
CARTER	PHILIPPE	PIERRE-FELICIEN.
CHO	FREDERICK	HYUNKOOK.
CHOI	YOUNG	HEE.
CHRISTOPHER-STICKEY	FRANCIS	ROBIN.
CULLEN	BARBARA	JEAN.
D'ARCY	JERRY	FRANCIS.
DAVIES	PETER	FREENAM.
DON PARK	DANIEL	YOUNG.
DRAPAC	JON	THOMAS.
DRAPAC-WEIDEN	LUCIA	MARIA.
FREELAND	FRED	CHARLES.
GEIPEL	GERARD	CHRISTIAN.
GLOVER-MESSER	EVA	MARIE.
GRAHAM	RICHARD	DAVID.
HALL	CHARLES	ROBERT.
HAMILL	MAURA.	
HONG	SUK	IN.
HURDSTORN	KAREN.	
IDETA	TAKESHI	ARNOLD.
IGASHI	MARIKO.	
ISAACSON	PAUL	W.
JOHNSON NEE COREMAN	ANNIE	YVONNE.
KENNY	ROBERT	ALEXANDER.
KIM	JONATHAN	KUNDO.
KIM	YOON	KOO.
KIM	EUGENE	YOUNG-SOO.
KIMOTO	ROSE	MARIE.
KING	CHRISTOPHER	CARLSON.
KOTLER	MARC	WILLIAM.
LARKIN	CAROL-ANN.	
LUCAS	NANCY	ELLEN.
MAHIA	HELLEN	WAITHERERO.
MCDONAGH	MAUREEN	ANGELA.
MORRIS	WILLIAM	WESLEY.
MYERS	MICHAEL	TODD.
NEE MITCHELL	CONSTANCE	ELLEN-CARSTENS.
NICOD	ROSE	MARIE.
PAIE	JI-EUN.	
PECARINA	MARIJAN.	
POPE	PETRELLA	THERESE.

which time he or she must participate in at least twelve auctions (Ohio Rev. Code § 4707.09), and Pennsylvania requires a person to serve a two-year

apprenticeship, pass an examination, and participate in at least 30 auctions (63 Pa. Stat. § 734.5). A licensed auctioneer in Pennsylvania may

have only one apprentice at any one time, while in Ohio, a licensed auctioneer may have two apprentices.