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DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF BANKS
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ISGC – 2005 – 009 – DOB

July 25, 2005

[redacted]

RE: [redacted] Bank

- Authority to Merge Insurance Agency Subsidiary into Depository Institution
- Insurance-Related Powers of a Washington-Chartered Depository Institution Acting as an Insurance Agency

Dear Ms. Steffeney:

You have inquired (hereinafter, "Inquiry") of the Division of Banks of the Washington State Department of Financial Institutions (hereinafter, "DFI") whether [redacted] Bank (hereinafter, "Bank") has authority to merge its insurance agency subsidiary (hereinafter, "Agency") into the Bank under the Gramm-Leach-Bliley Act of 1999 (hereinafter, "GLBA") and Bank's governing charter pursuant to Title 32 RCW.

You have informed DFI that your major concern is the inability of the existing Agency, as a *subsidiary* of Bank, to sell securities and be exempt from the Securities and Exchange Act of 1934 (hereinafter, "Exchange Act").[1] However, the DFI is not, for purposes of your inquiry, as concerned with the ***securities***-related powers of Bank as it is with its ***insurance***-related powers pursuant to GLBA.

The Agency itself, as a ***subsidiary*** of Bank, is unable, pursuant to GLBA, to sell securities and be exempt from the Exchange Act. While GLBA repealed the blanket exception

[1] See, for example, SEC Release No. 34-51328, dated March 8, 2005.

of depository institutions from the definition of "broker" and "dealer" under the Exchange Act, GLBA has replaced this blanket exception with new functional exceptions, so that a bank holding company, subsidiary of a bank or bank affiliate is still subject to broker-dealer regulation. In order to avoid "broker-dealer" regulation, the ***securities*** functions of Agency must be completely undertaken and subsumed by Bank and leave the province of the Agency.

What, then, about the ***insurance***-related (as opposed to securities-related) functions of Agency? Besides the selling of securities, Agency is a general lines insurance agent licensed with the Office of Insurance Commissioner of the State of Washington (hereinafter, "OIC") and other states (if any) in which Bank and its subsidiaries do business.

The purpose of this interpretive statement is to set forth the powers of a state-chartered savings bank chartered pursuant to Title 32 RCW to engage in insurance-related activities ***directly*** within the depository institution, as opposed to engaging in such activities by and through an operating subsidiary. In the course of this interpretation, the DFI will also, in passing, opine on the insurance-related powers of a Washington state commercial bank chartered pursuant to Title 30 RCW and a Washington state savings and loan association chartered pursuant to Title 33 RCW.

1.0 Summary Interpretation

QUESTION: May a savings bank chartered pursuant to Tile 32 RCW, or a commercial bank chartered pursuant to Title 30 RCW, merge an insurance agency subsidiary into its parent, depository institution itself?

ANSWER: Yes. *See* GLBA §104 [15 USC §6701]. GLBA established a federally mandated framework that both allows and encourages the convergence of the banking, ***insurance*** and securities industries. Legal barriers that have separated the industries have been dissolved or significantly modified at the national level, and most contrary provisions at the state level are preempted.

QUESTION: Are some of our state banking laws in Title 30 RCW, Title 32 RCW and Title 33 RCW, related to insurance activities of banks, savings banks and savings and loan associations, impermissibly restrictive in light of GLBA.

ANSWER: Yes. Under the auspices of GLBA, which effectively repealed the Glass-Steagall Act, most state ***insurance*** laws, rules, or interpretations that limit or prohibit a bank's ability to sell, solicit, or cross-market insurance products are rendered ineffective, subject to specifically delineated and nondiscriminatory consumer protection measures which are statutorily protected from preemption. *See* GLBA §104 (c) and (d) [15 USC §6701(c) and (d)].

QUESTION: What provisions of Titles 30, 32 and 33 RCW, and WAC 208-512 and 208-514, concerning the insurance activities of state-chartered depository institutions, are enforceable post-GLBA? Which provisions are not?

ANSWER: In general, Washington State is no longer permitted, pursuant to GLBA, to prevent or restrict, by statute, regulation, order, interpretation or other action, a depository institution from engaging directly in the conduct of an insurance agency. As set forth specifically in GLBA, no state may prevent or significantly interfere with the ability of Bank to engage, directly or indirectly, either by itself or in conjunction with an affiliate or any other person, in any insurance sales, solicitation, or cross-marketing activity. GLBA §104(d)(2)(A) [15 USC 6701(d)(2)(A)]. Subject to the detailed analysis and discussion set forth below in Subsection 2.2 of this interpretive statement, the following provisions of state law and regulation are either immaterial or no longer enforceable, as set forth immediately below:

- Demographic Limitations Unenforceable. RCW 30.08.140(10) and WAC 208-512-350(1), which state that a state-chartered commercial bank may act as an insurance agent, provided that it is located in a city of not more than five thousand inhabitants, are ***unenforceable***.

- Key WAC Provisions Unenforceable. All of the limitations set forth in WAC 208-512-350 are ***unenforceable***, to the extent they are preempted by § 104 of GLBA.

    - GLBA Supersedes Prior Federal Reserve Determinations. Determinations of the Board of Governors of the Federal Reserve, as of June 11, 1986, or any other time, are immaterial to whether a state-chartered commercial bank has authority to engage in insurance-related activities.
    - Asset Size Limitation Unenforceable. Asset size is immaterial to authority of a state-chartered commercial bank to engage in insurance agency activities.
    - Life, Disability and Involuntary Unemployment Insurance May Be Sold to General Public, Not Only Loan Customers. State-chartered commercial banks, acting as appropriately licensed insurance agents, may sell or broker life, disability and involuntary unemployment insurance without regard to whether the same relate to loans or extensions of credit.
    - Property and Casualty Insurance May Be Sold to the General Public, Not Only Loan Customers. State-chartered commercial banks, acting as appropriately licensed insurance agents, may sell or broker property and casualty insurance, without regard to amount or whether the property being insured is collateral for bank loans.
    - Authority of National Banks Immaterial. It is ***immaterial*** what authority national banks have (or do not have) to engage directly in insurance-related activities, since, with respect to state-chartered commercial banks under Title 30 RCW, authority is governed by and dependent upon § 104 of GLBA, as analyzed above in Subsection 2.1 of this interpretive statement.

- State Savings Bank May Directly Act as an Insurance Agent. RCW 32.08.160, as cited above, is ***unenforceable***. A state savings bank may, pursuant to § 104 of GLBA, act directly as an insurance agent.

- State Savings Banks Are Not Limited to Writing Property and Fire Insurance in which It Has an Insurance Interest. RCW 32.08.140(9) is also pre-empted by § 104 of GLBA and is ***unenforceable***. A state savings bank's power to act directly as an insurance agent is ***not*** limited only to the writing of fire insurance in which it has an insurable interest, or to property located in a city (or its immediate contiguous suburbs) where the bank's principal office and branches are situated. The intent of GLBA was, generally, to create an equal playing field between non-bank insurance sales and insurance sales by banks.

- State Savings and Loan Associations May Engage Directly as Insurance Agents. Notwithstanding the absence of any authority to engage as an insurance agency pursuant to the powers provisions of RCW 33.12.010 or any other provision of Title 33 RCW, a state savings and loan association, as a depository institution, may, pursuant to § 104 of GLBA, engage directly in the activities of an insurance agency.

Subject to the detailed analysis and discussion set forth in Subsection 2.1 below, § 104(d) of GLBA specifically permits state law and regulation to continue to enforce the following kinds of requirements or prohibitions:

- ***Prohibiting*** the rejection of an insurance policy because the policy has been issued or underwritten by any competitor or unaffiliated party. See Interpretive Statement, Subsection 2.1.4.1, below.

- ***Prohibiting*** any requirement for a borrower, insurer, insurance agent or broker to pay a separate charge for the handling of insurance that is a requirement of a loan or other traditional banking product, unless such charge would be required when the depository institution or its affiliate is the licensed insurance agent or broker providing the insurance. See Interpretive Statement, Subsection 2.1.4.2, below.

- ***Prohibiting*** any advertisement or other insurance promotional material by a depository institution or its affiliate that would cause a reasonable person to believe mistakenly that the federal government or the state (1) is responsible for the insurance sales activity of a bank or its affiliate, (2) stands behind the credit of a depository institution or its affiliate, (3) guarantees any returns on insurance products, or (4) is a source of payment of an insurance obligation of or sold by the depository institution or its affiliate. See Interpretive Statement, Subsection 2.1.4.3, below.

- ***Prohibiting*** the payment or receipt of any commission or brokerage fee or other valuable consideration for services as an insurance agent or broker to or by any person, including a bank, its affiliate or either of their employees or independent contractors, unless such person holds a valid State license regarding the applicable class of insurance at the time at which the services are performed.[2] See Interpretive Statement, Subsection 2.1.4.4, below.

[2] However, GLBA specifically declares that a simple referral by an unlicensed person of a customer or potential customer to a licensed insurance agent or broker, which does not include a discussion of specific insurance policy terms and conditions, is not a service as an insurance agent or

- ***Prohibiting*** compensation to any individual who is not licensed to sell insurance, for the referral of a customer that seeks to purchase, or seeks an opinion or advice on, any insurance product, based on the purchase of insurance by the customer. See Interpretive Statement, Subsection 2.1.4.5, below.

- ***Prohibiting*** the release of insurance information of a customer to any person, other than an officer, director, employee, agent, or affiliate of a depository institution, for the purpose of soliciting or selling insurance, without the express consent of the customer, except for certain transfer or releases of information. See Interpretive Statement, Subsection 2.1.4.6, below.

- ***Prohibiting*** the use of health information obtained from the insurance records of a customer for any purpose, other than for its activities as a licensed agent or broker, without the express consent of the customer. See Interpretive Statement, Subsection 2.1.4.7, below.

- ***Prohibiting*** requiring that insurance be obtained by the bank as a condition of a loan. See Interpretive Statement, Subsection 2.1.4.8, below.

- ***Requiring*** written disclosure be provided to the consumer indicating that the customer's choice of an insurance provider will not affect the credit decision or credit terms in any way. See Interpretive Statement, Subsection 2.1.4.9, below.

- ***Requiring*** written disclosures that a policy is ***not*** (1) a deposit, (2) insured by the FDIC, ***or*** (3) guaranteed by any depository institution, affiliate or any person selling insurance onsite, ***and*** (where appropriate) involves investment risk, which may include loss of principal. See Interpretive Statement, Subsection 2.1.4.10, below.

- ***Requiring*** credit and insurance transactions to be completed through separate documents. See Interpretive Statement, Subsection 2.1.4.11, below.

- ***Prohibiting*** inclusion of the expense of insurance premiums in the primary credit transaction without the express written consent of the customer. See Interpretive Statement, Subsection 2.1.4.12, below.

- ***Requiring*** maintenance of separate and distinct books and records relating to insurance transactions. See Interpretive Statement, Subsection 2.1.4.13, below.

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broker. Therefore, GLBA pre-empts state law that would attempt to require licensing of bank employees or independent contractors that simply make referrals and do not discuss specific insurance policy terms and conditions. See also Interpretive Statement, Subsection 2.1.4.4, below.

Bank should be mindful of any state insurance laws and regulations, which may be enforced by the OIC, that address the thirteen (13) exceptions to federal preemption reserved under §104 of GLBA and summarized above.

2.0 Analysis and Discussion

2.1 Analysis of Section 104 of GLBA. Section 104 of GLBA [15 USC §6701] sets forth the degree to which state law and regulation will still govern the insurance-related activities of insurance-related activities conducted directly within depository institutions chartered as Washington state commercial banks (Title 30 RCW) and savings banks (Title 32 RCW).

2.1.1 McCarran-Ferguson Act Controls. Pursuant to Subsection 104(a) of GLBA [15 USC §6701(a)], Congress made it clear that −

> "[t]he Act entitled 'An Act to express the intent of Congress with reference to the regulation of the business of insurance' and approved March 9, 1945 (15 U.S.C. 1011 et seq.) (commonly referred to as the 'McCarran-Ferguson Act') remains the law of the United States."

Based upon the above pronouncement, Congress reiterated its intent that, with the exception of certain provisions set forth in GLBA and the McCarran-Ferguson Act itself, state law will continue to govern the regulation of all insurance-related activities, including the operation of an insurance agency directly through a state-chartered depository institution.

2.1.2 A Washington-State Depository Institution Engaged Directly as an Insurance Agency Must Be Licensed by the OIC. Pursuant to Subsection (c)(1) of Section 104 of GLBA, [15 USC §6701(c)(1)], a depository institution may be directly engaged as an insurance agency. Pursuant to Subsection 104(b) of GLBA [15 USC §6701(b)], however, Washington-state depository institutions engaged directly as insurance agencies must be licensed by the OIC, and are further subject to Subsections (c), (d) and (e) of Section 104 of GLBA. As so declared by Congress −

> No person shall engage in the business of insurance in a State as principal or agent unless such person is licensed as required by the appropriate insurance regulator of such State in accordance with the relevant State insurance law, subject to subsections (c), (d), and (e).

2.1.3 Federal Preemption of State Restrictions on Insurance Sales Activities of Depository Institutions – Generally. In general, Washington State is no longer permitted, pursuant to GLBA, to prevent or restrict, by statute, regulation, order, interpretation or other action, a depository institution from engaging directly in the conduct of an insurance agency. As set forth specifically in GLBA, no state may prevent or significantly interfere with the ability of Bank to engage, directly or indirectly, either by itself or in conjunction with an affiliate or any

other person, in any insurance sales, solicitation, or cross-marketing activity. GLBA §104(d)(2)(A) [15 USC 6701(d)(2)(A)].[3]

2.1.4 Preservation of Certain State Restrictions Pursuant to GLBA. Notwithstanding GLBA's general federal preemption of state law related to insurance sales by banks, GLBA specifically preserves the ability of states to retain certain restrictions. These include:

2.1.4.1 Prohibiting the Rejection of Policies Written by Competitors or Unaffiliated Parties. State law may still ***prohibit*** the rejection of an insurance policy by a depository institution or its affiliate because the policy has been issued or underwritten by any competitor or unaffiliated party. *See* GLBA §104(d)(2)(B)(i) [15 USC 6701(d)(2)(B)(i)].

2.1.4.2 State Law May Limit Charges for Handling Insurance Required Incident to a Loan or Other Traditional Banking Product to a Bank or Affiliate When Acting as Insurance Agent. State law may still prohibit any requirement for a borrower, insurer, insurance agent or broker to pay a separate charge for the handling of insurance that is a requirement of a loan or other traditional banking product, unless such charge would be required when the depository institution or its affiliate is the licensed insurance agent or broker providing the insurance. *See* GLBA §104(d)(2)(B)(ii) [15 USC 6701(d)(2)(B)(ii)].

2.1.4.3 State Law May Prohibit the Use of Certain Advertisement or Other Insurance Promotional Material by a Bank or Its Affiliate. State law may still prohibit any advertisement or other insurance promotional material by a depository institution or its affiliate that would cause a reasonable person to believe mistakenly that the federal government or the state (1) is responsible for the insurance sales activity of a bank or its affiliate, (2) stands behind the credit of a depository institution or its affiliate, (3) guarantees any returns on insurance products, or (4) is a source of payment of an insurance obligation of or sold by the depository institution or its affiliate. *See* GLBA §104(d)(2)(B)(iii) [15 USC 6701(d)(2)(B)(iii)].

2.1.4.4 State Law Requiring License of a Bank or Affiliate as a Condition of Commissions, Brokerage Fees or Other Valuable Consideration. State law may still prohibit the payment or receipt of any commission or brokerage fee or other valuable consideration for services as an insurance agent or broker to or by any person, including a bank, its affiliate or either of their employees or independent contractors, unless such person holds a valid State license regarding the applicable class of insurance at the time at which the services are performed. However, GLBA specifically declares that a simple referral by an unlicensed person of a customer or potential customer to a licensed insurance agent or broker, which does not include a discussion of specific insurance policy terms and conditions, is not a service as an insurance agent or broker. Therefore, GLBA pre-empts state law that would attempt to require licensing of bank employees or independent contractors that simply make referrals and do not discuss specific insurance policy terms and conditions. *See* GLBA §104(d)(2)(B)(iv) [15 USC 6701(d)(2)(B)(iv)].

[3] Citing Barnett Bank of Marion County N.A. v. Nelson, 517 U.S. 25, 134 L. Ed. 2d 237 (1996).

2.1.4.5 State Law Prohibiting Compensation to Unlicensed Individuals for Referral of Insurance Customers. State law may still prohibit any compensation paid to or received by any individual who is not licensed to sell insurance, for the referral of a customer that seeks to purchase, or seeks an opinion or advice on, any insurance product, based on the purchase of insurance by the customer. *See* GLBA §104(d)(2)(B)(v) [15 USC 6701(d)(2)(B)(v)].

2.1.4.6 State Law Restricting Release of Customer Insurance Information. State law may still prohibit the release of insurance information of a customer[4] to any person, other than an officer, director, employee, agent, or affiliate of a depository institution, for the purpose of soliciting or selling insurance, without the express consent of the customer, except for:

- A transfer of insurance information to an unaffiliated insurer in connection with transferring insurance in force on existing insureds of the bank or its affiliate or an affiliate thereof, or in connection with a merger with or acquisition of an unaffiliated insurer; or
- The release of information as otherwise authorized by state or federal law.

See GLBA §104(d)(2)(B)(vi) [15 USC 6701(d)(2)(B)(vi)].

2.1.4.7 State Law Restricting Use of Customer Health Information. State law may still prohibit the use of health information obtained from the insurance records of a customer for any purpose, other than for its activities as a licensed agent or broker, without the express consent of the customer. *See* GLBA §104(d)(2)(B)(vii) [15 USC 6701(d)(2)(B)(vii)].

2.1.4.8 State Law Prohibiting Services on Condition of Obtaining Insurance from a Bank or Its Affiliate. In general, state law may still prohibit the extension of credit (or any product or service that is equivalent to an extension of credit, lease or sale of property of any kind), or furnishing of any services or fixing or varying the consideration for any of the above, on the condition or requirement that a customer obtain insurance from a depository institution or its affiliate, or a particular insurer, agent, or broker. *See* GLBA §104(d)(2)(B)(viii) [15 USC 6701(d)(2)(B)(viii)]. However, state law may ***not*** prohibit a depository institution or affiliate from engaging in any such activity if it would not violate section 106 of the Bank Holding Company Act Amendments of 1970 [12 USCS §§ 1971 et seq.], as interpreted by the Board of Governors of the Federal Reserve System. *See* GLBA §104(d)(2)(B)(viii)(I) [15 USC 6701(d)(2)(B)(viii)(I)]. Moreover, state law may ***not*** prohibit a depository institution or its affiliate from informing a customer or prospective customer (1) that insurance is required in order to obtain a loan or credit, (2) that loan or credit approval is contingent upon the procurement by the customer of acceptable insurance, or (3) that insurance is available from the depository institution or its affiliate. *See* GLBA §104(d)(2)(B)(viii)(II) [15 USC 6701(d)(2)(B)(viii)(II)].

[4] Defined as "information concerning the premiums, terms, and conditions of insurance coverage, including expiration dates and rates, and insurance claims of a customer contained in the records of the depository institution or an affiliate thereof." GLBA §104(d)(2)(B)(vi) [15 USC 6701(d)(2)(B)(vi)].

2.1.4.9 State Law Requiring Consumer Disclosures. In general, state law may require that when an application by a consumer for a loan or other extension of credit from a depository institution is pending, and insurance is offered or sold to the consumer or is required in connection with the loan or extension of credit by the depository institution or its affiliate, that a written disclosure be provided to the consumer or prospective customer indicating that the customer's choice of an insurance provider will not affect the credit decision or credit terms in any way. However, the depository institution may impose reasonable requirements concerning the creditworthiness of the insurer and scope of coverage chosen. *See* GLBA §104(d)(2)(B)(ix) [15 USC 6701(d)(2)(B)(ix)].

2.1.4.10 Other State Disclosure Requirements. State law may require clear and conspicuous disclosure, in writing, where practicable, to the customer prior to the sale of any insurance policy, that such policy is ***not*** (1) a deposit, (2) insured by the FDIC, ***or*** (3) guaranteed by any depository institution, affiliate or any person selling insurance onsite, ***and*** (where appropriate) involves investment risk, which may include loss of principal. *See* GLBA §104(d)(2)(B)(x) [15 USC 6701(d)(2)(B)(x)].

2.1.4.11 State Law Requiring Separation of Certain Insurance and Credit Documentation. State law may still require that, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from a depository institution or its affiliate, or any person soliciting the purchase of or selling insurance onsite, the credit and insurance transactions be completed through separate documents. *See* GLBA §104(d)(2)(B)(xi) [15 USC 6701(d)(2)(B)(xi)].

2.1.4.12 State Law Prohibiting Inclusion of Expense of Insurance Premiums in the Primary Credit Transaction without Written Consent of Customer. State law may still require that, when a customer obtains insurance (other than credit insurance or flood insurance) ***and*** credit from a depository institution or its affiliate, or any person soliciting the purchase of or selling insurance on the premises thereof, there may not be an inclusion of the expense of insurance premiums in the primary credit transaction without the express written consent of the customer. *See* GLBA §104(d)(2)(B)(xii) [15 USC 6701(d)(2)(B)(xii)].

2.1.4.13 State Law Requiring Maintenance of Separate Books and Records. State law may still require maintenance of separate and distinct books and records relating to insurance transactions, including all files relating to and reflecting consumer complaints, and requiring that such insurance books and records be made available to the appropriate state insurance regulator for inspection upon reasonable notice. *See* GLBA §104(d)(2)(B)(xiii) [15 USC 6701(d)(2)(B)(xiii)].

2.2 Analysis of Washington State Law and Regulation Expressly Affecting Insurance-Related Activities of Banks and Savings Banks. After the enactment of GLBA in 1999, the DFI adopted and amended, effective August 22, 2000, its agency rules governing insurance activities of state-chartered commercial banks and their subsidiaries (WAC 208-512-310 through WAC 208-512-370, inclusive). In deference to GLBA, WAC 208-512-360, as

amended, declares that a state-chartered commercial bank may conduct an insurance agency directly to the same extent that was previously authorized for a subsidiary of the bank.

However, the Legislature, DFI and OIC have not specifically repealed certain provisions of pre-GLBA state law or regulation so as to be consistent with the federal preemptions granted pursuant to GLBA. There are a number of Washington state laws and regulations affecting insurance-related activities of banks and savings banks. These statutes and rules either are or are no longer enforceable, pursuant to §104 of GLBA, as follows:

2.2.1 State Commercial Banks: Title 30 RCW and Applicable WAC Provisions.

2.2.1.1 State Legislature's Intent No Longer Material. 1985 Session Laws, Chapter 310, §3, declare that "[n]othing in this act shall be deemed to expand or limit the power of a bank holding company or bank to engage in the insurance business." [1985 c. 310 § 3.] Notwithstanding this declaration of legislative intent, those provisions of Title 30 RCW which limit the activities of state-chartered banks with respect to insurance, have been rendered unenforceable by GLBA.

2.2.1.2 DFI Director May Not Prevent a Bank from Acting as an Insurance Agent *Per Se*. RCW 30.04.127(2) declares that the "director may not authorize under this section and no bank or trust company may act as an insurance or travel agent unless otherwise authorized by state statute." To the extent that this provision requires approval of the DFI Director, such approval is no longer required. However, the DFI Director may still have authority to restrict or prohibit the activities of a Title 30 bank acting as an insurance agent if such activities would materially and adversely impact safety and soundness. In the absence of GLBA, RCW 30.04.127(2) would make the insurance activities of state-chartered commercial banks entirely dependent upon other state law, which is analyzed below.

2.2.1.3 Demographic Restrictions Are Unenforceable. RCW 30.08.140(10) states that a state-chartered commercial bank may act as an insurance agent, provided that "the bank [is] located in a city of not more than five thousand inhabitants." This demographic restriction is ***unenforceable*** pursuant to pursuant to §104 of GLBA. Likewise, WAC 208-512-350(1), which provides the same demographic restriction, is also unenforceable.

2.2.1.4 Restrictions on Types of Insurance Sales Are Unenforceable. WAC 208-512-350 states, in part, as follows:

> (3) A bank may engage in insurance activities that have been determined by the board of governors of the federal reserve system or by the United States Congress to be closely related to the business of banking, as of June 11, 1986. These activities include, but are not limited to:
>
> (a) General insurance agency activities conducted by a bank with total assets of fifty million dollars or less, provided, however, that

> such bank may not engage in the sale of life insurance or annuities. For purposes of this exception "total assets" is determined by the latest consolidated report of condition filed with the director of the department of financial institutions. This exception ceases when the value of the assets of the bank exceed fifty million dollars. The insurance agency license must be surrendered and the assets sold or otherwise disposed of within three years unless otherwise extended by the director of the department of financial institutions.
>
> (b) A bank may act as agent for life, disability, and involuntary unemployment insurance if the insurance is limited to assuring the repayment of the outstanding balance due on a specific extension of credit by the bank.
>
> (c) A bank may act as agent for property insurance on loan collateral, provided such insurance is limited to assuring repayment of the outstanding balance of the extension of credit and such extension of credit is not more than ten thousand dollars (twenty-five thousand dollars to finance the purchase of a residential manufactured home and which is secured by such home) increased by the percentage increase in the *Consumer Price Index for Urban Wage Earners and Clerical Workers* published monthly by the Bureau of Labor Statistics for the period beginning on January 1, 1982, and ending on December 31 of the year preceding the year of the extension of credit.
>
> (4) A bank . . . may engage in any insurance agency activity lawfully engaged in by national banks located in the state of Washington.

All of the limitations set forth in WAC 208-512-350, as cited above, are ***unenforceable***, to the extent they are preempted by § 104 of GLBA. First, determinations of the Board of Governors of the Federal Reserve, as of June 11, 1986, or any other time, are immaterial to whether a state-chartered commercial bank has authority to engage in insurance-related activities. Second, asset size is immaterial to authority of a state-chartered commercial bank to engage in insurance agency activities. Third, state-chartered commercial banks, acting as appropriately licensed insurance agents, may sell or broker life, disability and involuntary unemployment insurance without regard to whether the same relate to loans or extensions of credit. Fourth, state-chartered commercial banks, acting as appropriately licensed insurance agents, may sell or broker property and casualty insurance, without regard to amount or whether the property being insured is collateral for bank loans. And finally, it is immaterial what authority national banks have (or do not have) to engage directly in insurance-related activities, since, with respect to state-chartered commercial banks under Title 30 RCW, authority is governed by and dependent upon § 104 of GLBA, as analyzed above in Subsection 2.1 of this interpretive statement.

2.2.2 State Savings Banks: Title 32 RCW.

2.2.2.1 Limitations on a Savings Bank Acting as an Insurance Agent Are Unenforceable. RCW 32.08.160 declares the following limitation with respect to a state savings bank directly acting as an insurance agent:

> When a savings bank is itself acting as an insurance agent, a trustee, officer, or employee of the bank shall not act as an insurance agent to write fire insurance on property in which the bank has an insurable interest, and no part of a room used by a savings bank in the transaction of its business shall be occupied or used by any person other than the bank in the writing of fire insurance.

RCW 32.08.160, as cited above, is ***unenforceable***.

2.2.2.2 Limitations on Types of Insurance Sold and Demographics of Marketing Are Unenforceable In addition, RCW 32.08.140(9) declares that a state savings bank only has the power —

> To act as insurance agent for the purpose of writing fire insurance on property in which the bank has an insurable interest, the property to be located in the city in which the bank is situated and in the immediate contiguous suburbs, notwithstanding anything in any other statute to the contrary.

RCW 32.08.140(9) is also pre-empted by § 104 of GLBA and is ***unenforceable***. A state savings bank's power to act directly as an insurance agent is ***not*** limited only to the writing of fire insurance in which it has an insurable interest, or to property located in a city (or its immediate contiguous suburbs) where the bank's principal office and branches are situated. The intent of GLBA was, generally, to create an equal playing field between non-bank insurance sales and insurance sales by banks.

2.2.3 State Savings and Loan Associations: Title 33 RCW. There is no specific power under state law, as set forth in RCW 33.12.010 or any other provision of Title 33 RCW, permitting a state savings and loan association to engage directly in the activities of an insurance agency. However, pursuant to § 104 of GLBA, a state savings and loan association, as an FDIC-insured depository institution, has such authority. While there are presently no Title 33 charters in Washington State, a future Title 33 charter would have the authority, pursuant to GLBA but subject to a determination of safety and soundness by the DFI Director, to act directly as an insurance agency.

2.2.4 State Insurance Laws and Regulations. The DFI is not mandated to officially interpret state insurance laws and regulations. However, under its authority to interpret what authority its stakeholder banks and savings banks may have to directly conduct any

business, we take this opportunity to declare generally that any state law or regulation in conflict with the provisions of § 104 of GLBA, as summarized above, in Subsection 2.1 of this interpretative statement, is unenforceable pursuant to the Supremacy Clause (Article VI, U.S. Constitution) and the principles of federal preemption set forth in Barnett Bank of Marion County N.A. v. Nelson, 517 U.S. 25, 134 L. Ed. 2d 237 (1996).

3.0 Concluding Remarks

For all of the reasons set forth above, we conclude that Bank may directly be engaged as an insurance agency, pursuant to appropriate license by the OIC, but free from any limitations and restrictions, as discussed in this interpretive statement, that conflict with §104 of GLBA and that have not been repealed since the enactment of GLBA or been specifically amended to conform with §104 of GLBA. Accordingly, subject to the continuing authority of the Division of Banks to regulate the safety and soundness of the Bank's operations, Bank may merge its insurance agency subsidiary into the depository institution itself.

The statutory standards for making this determination are uniformly applicable for any Washington State-chartered commercial bank, savings bank or savings and loan association. However, persons other than Bank are advised that each institution's relevant facts and circumstances may be different; and such relevant facts, as applied to the governing law, may result in the Director of the Division of Banks reaching a conclusion different than the one set forth above.

Should you have any questions, please do not hesitate to call upon the Division of Banks at either (360) 902-8704.

Sincerely,

WASHINGTON STATE DEPARTMENT OF
FINANCIAL INSTITUTIONS

By: Joseph M. Vincent

Joseph M. Vincent
DFI General Counsel

For Division of Banks