Would Leach Bill Help Banks Sell Insurance? Tell Us Another

By

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House Banking Chairman Jim Leach's May 3rd [1996] speech before the Chicago Federal Reserve's Conference on bank structure and competition may be the best piece of fiction since Walt Disney's Pollyanna.

Mr. Leach asserts that his legislation "allows for insurance underwriting and agency affiliations" and that, "regardless of what critics contend, the bill is a floor, not a ceiling."

If his latest version is a floor, that floor is a sub-basement whose ceiling is lower than the cellar door.

The Supreme Court's Barnett decision was a sweeping victory for banks. It changed Mr. Leach's strategy and that of insurance agents. Why else could the Independent Insurance Agents of America swallow the latest bill?

This bill would subject the industry to unending rounds of litigation in which the law would be tilted in favor of 50 separate insurance commissioners and agent trade associations.

The Barnett decision affirms the supremacy of Section 92 of the National Bank Act over the McCarren Ferguson Act. It strikes down state anti-affiliation statutes used to bar national banks from selling insurance and establishes a far-broader preemption analysis than the single line lifted from the Court's decision and proclaimed as the so-called "Barnett standard."

This alleged standard has been hoisted by bank insurance foes—and is a counterfeit. Bankers are not taken in by language and terms crafted by the very forces that would keep banks out of the insurance business in order to defend their special privileges and protected marketplace.

Having lost the litigation war, agents need new legislation. The Leach bill is their Trojan horse.

In fact, the Barnett decision aids state-chartered banks in their quest for insurance agency powers. The Leach legislation does not.

Because the Leach bill undermines Barnett's supremacy, state and national banks in anti-affiliation states would lose the opportunity to set up and implement efficient and cost-effective insurance agency activities.

Bankers recognize the potential lost opportunities of supporting the Leach bill. They understand that only a 5 percent share of the life insurance market would earn them four to five times the revenue of their recent annuity sales.

The imprecise language in sections of the Leach bill is unacceptable as well. Instead of eliminating state anti-affiliation statutes that limit or impair national bank insurance activities, the bill stipulates that none of its provisions "may be construed as limiting or otherwise impairing the authority of any State to regulate the manner (including the manner of consumer protection) in which a national bank may provide insurance within the State."

The Crisis in Life Insurance:

The FIIA Bank Insurance White Paper 1995

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This reference to the manner of selling insurance is far broader than the reference to the manner of selling annuities, which is limited to "consumer disclosure requirements or licensing requirements, procedures and qualifications."

Mr. Leach has added a version of the Baker amendment that generally makes insurance companies owned by bank holding companies, the holding companies themselves, and their affiliated banks subject to state anti-affiliation laws.

The *Barnett* decision aids state banks in their quest for agency powers. The Leach legislation would not.

This would further balkanize the financial services industry and is inappropriate "functional regulation."

It is neither progressive policy, nor would it advance the cause of bank insurance and modernize our financial system. It is, once again, an anti-competitive and protectionist provision.

Although the language of the latest Leach proposal is vague and ambiguous in many instances (a situation bound to lead to further litigation), it would establish the supremacy of 50 state insurance regulators over Section 92 and would permit state insurance commissioners to impose discriminatory conditions on national bank insurance agencies.

Although moratorium language prohibiting the Office of the Comptroller of the Currency from ruling on permissible insurance activities has been removed, the bill would extinguish the OCC's authority by amending Section 92.

It would does this by granting states authority to regulate "the manner" of national bank insurance sales, altering the OCC's authority to determine "incidental" banking powers, and requiring the agency and the courts to consider the views of 50 insurance commissioners as to whether a product should be regulated as insurance.

This provision is more damaging and restrictive than the original five-year moratorium on the Comptroller's Office. It would destroy the clarity brought to the bank insurance market by the unanimous Barnett and VALIC decisions.

Having lost the litigation war, agent associations need new legislation to further delay their competitors and begin anew their litigation-stalling tactics. The Leach bill is their Trojan horse.

Mr. Leach's speech to the Chicago Fed suggests support for his bill that does not exist. He announces that his committee has completed staff discussions with leading bank associations and several banks.

He speaks of a "compromise approach" that "represents a consensus package that has a decent prospect of receiving significant endorsements."

He claims he has been "negotiating a Glass-Steagall reform approach that obtains widespread industry consensus and advances the public interest" and that is "on the brink of House consideration."

Bankers know it is not in their best interest to short-change their right to compete as agents in the insurance market.

The only "widespread consensus" in favor of the Leach bill may be agent trade associations that finally see the handwriting on the wall, along with a handful of large banks whose principal interest is in securities or whose extensive insurance powers are already grandfathered under various federal and state laws.

The Financial Institutions Insurance Association, its members, the Executive Council of State Community Bankers Associations, and many others continue to oppose this bill.

This latest version of Mr. Leach's bill does not "advance the public interest." Consumers' interests are tossed aside in favor of the interest of status quo-seeking agent trade associations.

And Mr. Leach's removal of CRA reform and other regulatory relief from the bill gives bankers no incentive to surrender their hard-won victories to attain insurance agency powers by supporting his bill.

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