

2. REGULATORY ISSUES

Annuities are currently subject to state regulations enforced by state insurance officials. It is unclear if state insurance regulatory requirements will apply to the Retirement CD. Both customers and the bank should know this. If state regulations do not apply, it should be determined whether banks and bank regulators currently have the ability or resources to safeguard these accounts, and what policies and procedures are necessary to train bank personnel about annuities and about appropriate sales practices.

3. SAFETY AND SOUNDNESS ISSUES

Blackfeet and other banks that may offer the Retirement CD clearly will be acting as an underwriter of what is essentially an annuity. Although clever lawyering has gained this annuity product designation as a "deposit", it poses much greater risk to the bank than a traditional deposit. National banks will be assuming an unprecedented and inappropriate risk as a result of having to make a fixed payout for the life of a customer. Ultimately, these payments could exceed the consumer's balance on deposit at maturity. While the OCC suggests that Blackfeet's business plan should indicate how it will manage the risk associated with the annuity payment, the OCC requires no specific showing that the bank has the capability to quantify or manage this long-term liability of unknown proportions.

This "deposit" is structured so that at the date of maturity, the bank must determine the fixed lifetime payout for the customer using a complex and not entirely-discernible process to achieve a proper rate of return. The Congress has opted not to authorize banks to assume the type of risk Blackfeet would assume in offering the Retirement CD. The OCC and the FDIC seem willing to disregard this consistent record of Congressional reluctance to allow federally-insured depository institutions to engage in such high-risk activities. The OCC and FDIC also seem too willing to take it on faith that a small national bank (armed with a software program) will have the business acumen and operational know-how to handle the risk of underwriting this annuity product.

4. COMPETITIVE EQUALITY ISSUES

The proliferation of the Retirement CD will produce an unfair competitive advantage for banks. It is reasonable to expect that consumers will be drawn to a tax-deferred annuity that also offers federal deposit insurance. By allowing national banks to underwrite, market and sell a tax-deferred annuity that is FDIC-insured, the FDIC is granting a substantial competitive advantage over similar annuity products that do not come with a government guarantee.

In expanding future opportunities for all financial service providers and consumers, the Federal government's goal should be to encourage competition on a free and fair basis. Balance sheet strength, customer service and other market-determined characteristics, not market-distorting government guarantees, should determine success. Given the recent savings and loan crisis, and the regulators' concerns over the abuse of deposit insurance, it would seem ill-advised to extend the reach of the federal safety net to a product that raises so many regulatory, competitive and consumer protection concerns.

The OCC and the FDIC have made it very clear that when given the opportunity, they will usually take the most expansive and creative view of bank powers under current law. We strongly support the view that, to the maximum extent possible, an explicit statutory mandate must exist before the regulators authorize expanded powers for banks,

or any other financial intermediaries. For this reason, we continue to support comprehensive modernization of our entire financial system. Until this can be accomplished by Congress, we urge the OCC and FDIC to balance the proclivity to expand bank powers through regulatory channels against the legitimate public policy concerns of consumer protection, safety and soundness, and competitive equality. Products that raise serious public policy concerns deserve great scrutiny, regardless of how cleverly they are packaged or how attractive they may be to the banking industry. The Retirement CD is clearly one such product.

We do not share your view that this product, as it is currently structured, is an appropriate product for national banks to offer to retail customers. Therefore, we are developing, and will soon introduce, legislation to prohibit the sale of this investment product. Pending consideration of this legislation by Congress, we urge the OCC and the FDIC to reconsider their respective positions on the Retirement CD.

Sincerely,

CHRISTOPHER J. DODD,
RICHARD H. BRYAN,
ALFONSE M. D'AMATO,
LAUCH FAIRCLOTH.●

ADDITIONAL COSPONSORS

S. 44

At the request of Mr. REID, the names of the Senator from Oklahoma [Mr. INHOFE] and the Senator from New York [Mr. D'AMATO] were added as cosponsors of S. 44, a bill to amend title 4 of the United States Code to limit State taxation of certain pension income.

S. 388

At the request of Ms. SNOWE, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 388, a bill to amend title 23, United States Code, to eliminate the penalties for noncompliance by States with a program requiring the use of motorcycle helmets, and for other purposes.

S. 534

At the request of Mr. BAUCUS, his name was added as a cosponsor of S. 534, a bill to amend the Solid Waste Disposal Act to provide authority for States to limit the interstate transportation of municipal solid waste, and for other purposes.

S. 585

At the request of Mr. SHELBY, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 585, a bill to protect the rights of small entities subject to investigative or enforcement action by agencies, and for other purposes.

AMENDMENTS SUBMITTED

THE INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE ACT OF 1995

D'AMATO AMENDMENTS NOS. 878-

913

(Ordered to lie on the table.)

Mr. D'AMATO submitted 36 amendments intended to be proposed by him to the bill (S. 534) to amend the Solid Waste Disposal Act to provide authority for States to limit the interstate transportation of municipal solid waste, and for other purposes; as follows:

AMENDMENT NO. 878

On page 34, delete line 18 through page 35, line 2, delete all and replace with the following:

(i) 3,600,000 tons of municipal solid waste in calendar year 1996;

(ii) 3,100,000 tons of municipal solid waste in each of calendar years 1997 and 1998;

(iii) 2,600,000 tons of municipal solid waste in each of calendar years 1999 and 2000;

(iv) 2,100,000 tons of municipal solid waste in each of calendar years 2001 and 2002; and

(v) 1,850,000 tons of municipal solid waste in calendar year 2003 and each year thereafter.

(B)(i) No State may export to landfills or incinerators in any 1 State that are not covered by host community agreements more than the following amounts of municipal solid waste:

(I) In calendar year 1996, the greater of 1,400,001 tons or 90 percent of the amount exported to the State in calendar year 1993.

(II) In calendar year 1997, the greater of 1,300,000 tons or 90 percent of the amount exported to the State in calendar year 1996.

(III) In calendar year 1998, the greater of 1,200,000 tons or 90 percent of the amount exported to the State in calendar year 1997.

(IV) In calendar year 1999, the greater of 1,110,000 tons or 90 percent of the amount exported to the State in calendar year 1998.

(V) In calendar year 2000, 1,000,000 tons.

(VI) In calendar year 2001, 800,000 tons.

(VII) In calendar year 2002 or any calendar year thereafter, 600,000 tons.

On page 38, delete from line 22 to page 39, line 6, and replace with the following:

(i) 3,600,000 tons in 1996;

(ii) 3,100,000 tons in 1997;

(iii) 3,100,000 tons in 1998;

(iv) 2,600,000 tons in 1999;

(v) 2,600,000 tons in 2000;

(vi) 2,100,000 tons in 2001;

(vii) 2,100,000 tons in 2002;

(viii) 1,850,000 tons in 2003; and

(ix) 1,850,000 tons in each calendar year after 2003.

AMENDMENT NO. 879

On page 34, delete line 18 through page 35, line 2, delete all and replace with the following:

(i) 3,600,000 tons of municipal solid waste in calendar year 1996;

(ii) 3,100,000 tons of municipal solid waste in each of calendar years 1997 and 1998;

(iii) 2,600,000 tons of municipal solid waste in each of calendar years 1999 and 2000;

(iv) 2,100,000 tons of municipal solid waste in each of calendar years 2001 and 2002; and

(v) 1,850,000 tons of municipal solid waste in calendar year 2003 and each year thereafter.

(B)(i) No State may export to landfills or incinerators in any 1 State that are not covered by host community agreements more than the following amounts of municipal solid waste:

(I) In calendar year 1996, the greater of 1,400,002 tons or 90 percent of the amount exported to the State in calendar year 1993.

(II) In calendar year 1997, the greater of 1,300,000 tons or 90 percent of the amount exported to the State in calendar year 1996.

(III) In calendar year 1998, the greater of 1,200,000 tons or 90 percent of the amount exported to the State in calendar year 1997.