

## V. Application of Section 92 in the Modern Context

This brings us to the application of section 92 today. Two critical elements emerge from the preceding discussion. First, section 92 by its literal terms, consistent with Congressional intent and as construed by relevant case law, does not subject national banks soliciting and selling insurance under that section to unique restrictions or disabilities relative to insurance agents generally in a particular state. Second, given the flexibility with which banks and insurance agents operated in 1916, it is entirely consistent with the section's authority and purpose to allow national bank insurance agencies to employ the same variety of marketing resources and tools as are used today by other insurance agencies.

Accordingly, the first question we ask is a relatively simple one: Could a non-bank, non-bank-affiliated insurance agency based in a particular "place of 5,000" use the methods, tools and facilities the bank proposes to use to solicit and sell insurance? If state law would not so limit the marketing range, methods and facilities available for non-bank, non-bank-affiliated agencies, then that scope and those methods and facilities also should be permissible for a bank or bank-affiliated agency.

The second question draws on the history of section 92: Are the bank agency's operations inconsistent with the type of activities Congress accepted and authorized? On this issue, a brief recap of the historical perspective when Congress authorized national banks to act as insurance agents in 1916, discussed in detail in section III, *supra*, is helpful. At that time, nonbank insurance agents were soliciting and servicing insurance customers in territories that could encompass large geographic areas, such as whole states or several states. The insurance salesmen's general pattern was to personally solicit customers in any way possible, such as seeking out prospective customers at home, at the office, at the club, or elsewhere. The efficient and prosperous salesmen used any means available to seek out prospects. Similarly, the general business of banking was not limited to the confines of the bank's physical location. Bankers also engaged in personal solicitation of prospective customers.

In conducting their business, insurance salesmen and bankers alike used the latest devices and technology to sell their products, such as the mails, the telegraph, and the telephone. These activities extended beyond city and town boundaries. The clear emphasis for banks was to adopt progressive methods and strategies to sell the bank's services, similar to methods and strategies used in the commercial and industrial business spheres.

In particular, both the insurance and banking industry in 1916 used advertising to solicit business. **NOTE:** By 1916 bankers had gone from mere announcement advertising to full-scale advertising campaigns. See notes 56-74 *supra* and accompanying text. Banks engaged in extensive advertising in a variety of forms, including local mediums such as newspapers, window displays, and streetcars, as well as nationally circulating trade journals and magazines. **NOTE:** Banks were encouraged to be creative, individual, and

develop a personality through advertising. See Earl Fischer, *The Keyword in Bank Advertising*, 2 *Successful Banking* 27 (May 1917).

The organizational structure of the “general insurance agency” usually resulted in agents being managed from a local agency, although agents were not necessarily based or present in the local office on a day-to-day basis. By 1916, the general agent acted as the local sales manager and was in charge of the activities of his agents. Salesmen typically were paid by the general agent from the local agency location. Similarly, bank employees typically were managed from the local bank location. **NOTE:** See Howard M. Jefferson, *Improvements of Bank Methods*, 97 *Bankers Mag.* 261 (Sept. 1918) (banks used the functional type of organization to some extent and managers were placed in charge of new divisions as they were created).

The local agency was the insurance salesmen’s place of business for licensing purposes. Insurance agents and managers sent correspondence and applications from the local agency office to the home office while the home office sent the policies for delivery to the local agency offices. **NOTE:** See The Prudential Life Ins. Co. of America, *Manual of Instructions to Superintendents and Ass’t. Supt. and Instructions to Agents*, *supra* at 14-15, 20-21; The Prudential Life Ins. Co. of America, *Instructions Regarding the Care of Ordinary Policies, Premiums, and Office Details*, *supra* at 17.) Soliciting agents were required to be licensed by the state for registration, tax, or regulatory purposes. **NOTE:** Stalson, *supra* at 626 (Massachusetts in 1911 intended to license all full-time agents; New York considered requiring examinations of applicants for soliciting licenses as early as 1911.) Insurance companies also were subject to state licensing requirements. **NOTE:** See *id.* at 436. In addition, state laws required that an out-of-state insurance company must grant state-wide power of attorney for acceptance of legal service of summons and complaint to someone residing in the state. These requirements led insurance companies to give broad general powers to their principal selling representative, i.e. the “general” agent, and thus state lines tended to become the boundaries of the agent’s power of attorney as well as his selling activities. Today insurance companies have made the superintendent of insurance (insurance commissioner) the agent for service of process. See *id.* at 379-80.)

Section 92 as enacted in 1916 generally described the ways national bank insurance agencies operated: by soliciting and selling, by collecting premiums, and by receiving commissions and fees for these services from the insurance company. Congress knew how to, but conspicuously did not delineate or curtail how these activities were to be conducted by bank insurance agencies. Thus, Congress permitted national banks to operate effectively in the insurance business that existed in 1916, and also did not restrain banks’ ability to modernize their solicitation and sales methods as needed to remain competitive as the insurance business evolved.

Thus, today, insurance agents enjoy expanded geographic flexibility, and employ technological innovations and contemporary marketing methods and facilities. The language of section 92, its legislative history, the practices of banks and insurance agents in 1916, the OCC's longstanding interpretive ruling, and recent cases, all support the conclusion that a national bank insurance agency located in a "place of 5,000" should be permitted the same marketing range and be able to use the same marketing tools and facilities as generally available for licensed insurance agencies in the state(s) in which the bank agency operates.

Accordingly, the following general principles can be distilled from the foregoing analysis to define the scope of solicitation and sales activities permissible for national banks under section 92:  
(NOTE: This description is not intended to be exhaustive and we recognize that solicitation and sales techniques can vary with the different marketing strategies employed by different banks and yet still be consistent with the general principles set forth herein.)

- *The agency located in the "place of 5,000" must, of course, be bona fide.* In the present situation that will clearly be the case. Agents will be managed through the agency and the "place of 5,000" will be the agency's business location for licensing purposes. Each agency will be responsible for collecting commissions from insurance carriers and paying commissions to its licensed sales staff. The agency also generally will be responsible for processing insurance applications, delivery of insurance policies, and collection of premiums, where consistent with procedures of the relevant insurance carriers. In addition, business records of the agency, including copies of customer application and policy information, and licensing, customer complaint, and other compliance records, will be available at the "place of 5,000."  
(NOTE: As previously noted, business records may be maintained and available at the agency in electronic form, with the original hardcopy kept in off-site storage.)
  
- The bank agency and its agents may seek the same market range and use the same marketing tools and facilities as generally available for a licensed insurance agency, not affiliated with a bank, that is based in the "place of 5,000."  
(NOTE: As previously noted, this letter does not address and is not intended to express any opinion on any state law preemption issues. See note 5 *supra* and accompanying text.) This will generally allow the following:
  - .. Meetings with customers and solicitations and sales of insurance by agents of the bank agency may take place at locations inside the "place of 5,000" as well as at locations outside that "place," provided the agents are managed and paid through the bank agency located in the "place of

5,000" and use that location as their place of business for licensing purposes. If an insurance company has adopted other procedures for its nonbank agents, however, the bank agency may follow the same procedures as other insurance agents selling the company's policies.

- .. Mailings to advertise and sell insurance may originate from inside or outside of the "place of 5,000," and brochures, leaflets, and other literature alerting potential customers to the bank's insurance activities may be distributed from locations both inside and outside of the "place of 5,000," including other branches of the same bank. Personnel of bank branches outside of the "place of 5,000" also may make referrals to the bank's insurance agency. Likewise, telephone and cybermarketing may be used and the calls and messages need not originate within the "place of 5,000."
- .. The bank may contract with third parties to assist the agency's sales activities. For example, third parties might provide advertising support, direct mail marketing services, telemarketing services, payments processing, or other types of "back office" support.

Based on the foregoing analysis and conclusions, and the representations made by the Banks that the Subsidiaries would operate in a manner that is consistent with the analysis described above, the OCC concludes that the Subsidiaries' proposed insurance agency activities are permissible under section 92 and that the Subsidiaries' proposed activities as agent for the sale of fixed and variable annuities are permissible under 12 U.S.C. § 24(Seventh).

Accordingly, the OCC approves the Banks' operating subsidiary notification. If you have any questions, please do not hesitate to contact me (202/874-5200) or Suzette H. Greco, Senior Attorney (202/874-5210).

Sincerely,

/s/

Julie L. Williams  
Chief Counsel