



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Interpretive Letter #824

February 27, 1998

March 1998
12 U.S.C. 92
12 U.S.C. 24(7)21

Dear []:

This is in response to your letter inquiring if national banks may participate in a proposed insurance program involving a corporation owned by independent insurance agencies. Based on the representations in your letter and for the reasons discussed below, we find that the proposed activities for national banks are permissible and are consistent with prior Office of the Comptroller of the Currency ("OCC") opinions.¹

I. PROPOSAL

As described in your letter, you propose a program through which a group of independent insurance agencies would pool their resources to offer smaller national banks the opportunity to provide insurance products to their customers. The agencies would form and own a corporation that would solicit and sell insurance to customers of the participating national banks.² Employees of the banks participating in the program would refer customers to the corporation and would provide brochures, leaflets, and other literature informing customers of the availability of the insurance products and services from the corporation. Your program contemplates the following arrangements:³

¹ This letter does not address and is not intended to express any opinion on the permissibility of the proposed program under state laws. We would expect any national bank considering your program to seek assurance itself concerning compliance with applicable state laws.

² You note that, in particular, smaller national banks may benefit by having greater access to insurance carrier markets because the individual premium developed from each bank's customers could be combined with that from other banks to satisfy insurance carrier premium volume requirements.

³ Your proposed program is one example of an arrangement between national banks and third party vendors involving insurance-related services. Currently, national banks engage in various types of arrangements related to the solicitation and sale of insurance. This letter is intended only to address the specific program you proposed and may not necessarily effect national banks engaging in other types of arrangements.

- (1) Each participant bank and a wholly-owned operating subsidiary (“participating bank agency”) would be located in a place with a population of fewer than 5,000 inhabitants according to the last census (“place of 5,000”).⁴
- (2) Licenses obtained by the participating bank agency or its state licensed insurance agent, as appropriate, (“bank representative”) would list the “place of 5,000” as the agency’s business location and appropriate licensing documentation would be maintained at that location.
- (3) The bank representative or the participating bank agency would receive a percentage of the premium, commission, or net income generated as a result of the bank’s referrals based on the contract terms between the corporation and the respective national bank or its participating bank agency.
- (4) Business records of the participating bank agency, including copies of customer applications and policy information, and licensing, customer complaint, and other compliance records would be available to the bank representative either directly or via electronic media, i.e., the bank representative would have electronic access to all scanned applications, correspondence, complaints, and other customer related documents from an off-site location.

II. ANALYSIS

National banks are authorized to engage in insurance activities as “agent” pursuant to 12 U.S.C. § 92. In addition, the OCC has long recognized that national banks may act as “finders” by providing referral or other services related to a wide variety of products, including insurance.⁵ These finder activities are part of the business of banking pursuant to 12

⁴ Consistent with 12 C.F.R. § 7.1001, the bank may have a “branch” rather than the bank’s main office located in the “place of 5,000.”

⁵ See, e.g., 12 C.F.R. § 7.1002 (formerly 12 C.F.R. § 7.7200); Corporate Decision 97-60 (July 1, 1997) (Internet-based referral services for used vehicles, including related insurance products); Conditional Approval No. 221 (Dec. 4, 1996) (links to third party vendors’ websites); Interpretive Letter No. 653 (Dec. 22, 1994), *reprinted in* [1994-95 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,601 (insurance-related services for underwriters and insurance agencies); Letter from Lee Walzer, Attorney, Securities, Investments, and Fiduciary Practices Division (Aug. 24, 1992) (trust referral activities); Interpretive Letter No. 566 (Dec. 2, 1991), *reprinted in* [1991-92 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,320 (insurance-related activities for insurer); Interpretive Letter No. 472 (Mar. 2, 1989), *reprinted in* [1989-90 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,008 (services related to homeowners insurance); No-Objection Letter No. 89-02, *reprinted in* [1989-90 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,014 (Apr. 7, 1989) (automobile club membership services); Interpretive Letter No. 437, *reprinted in* [1988-89 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,661 (July 27, 1988) (tax auditing representation services); Interpretive Letter No. 238, *reprinted in* [1983-84 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,402 (Feb. 9, 1982) (real estate-related services); Letter from John M. Miller, Acting Deputy Chief Counsel (July 26, 1977) (activities related to the purchase and sale of businesses).

U.S.C. § 24(Seventh). See Conditional Approval No. 221 (Dec. 4, 1996). As discussed below, based on the facts you represent, it appears that your proposed insurance program for national banks may be permissible under both 12 U.S.C. § 92 and 12 U.S.C. § 24(Seventh).

A. Authority of a National Bank to Act as an “Agent” under 12 U.S.C. § 92

Section 92 provides:

In addition to the powers now vested by law in national banking associations . . . any such association located and doing business in any place the population of which does not exceed five thousand inhabitants . . . may, under such rules and regulations as may be prescribed by the Comptroller of the Currency, act as the agent for any fire, life, or other insurance company authorized by the authorities of the State in which said bank is located to do business in said State, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered such fees or commissions as may be agreed upon between the said association and the insurance company for which it may act as agent. . . .

12 U.S.C. § 92. Section 92 authorizes a national bank that is located and doing business in a place with a population of less than 5,000 to solicit and sell insurance as agent for state-authorized insurance companies. Since 1963, the OCC has interpreted the reach of section 92 to permit a branch office of a bank to act as agent for insurance companies if the branch is located in a community with a population of less than 5,000, even if the main office of the bank is located elsewhere. 12 C.F.R. § 7.1001.⁶

The Supreme Court in *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. __, 116 S.Ct. 1103 (1996) examined the language of section 92 and found that section 92 suggests “a broad, not limited permission” for national banks to act as the agent for insurance sales. The OCC and the courts have construed the language of section 92 to permit national banks to engage in a range of agency insurance activities from locations of less than 5,000 in population. In taking this view, the OCC has carefully considered the plain language of the statute, the legislative history, the contemporaneous practices of banks and insurance agents in 1916 when the law was enacted, the OCC’s longstanding interpretive ruling under section 92

⁶ Interpretive ruling § 7.1001 provides:

Pursuant to 12 U.S.C. 92, a national bank may act as an agent for any fire, life, or other insurance company in any place the population of which does not exceed 5,000 inhabitants. This provision is applicable to any office of a national bank when the office is located in a community having a population of less than 5,000, even though the principal office of such bank is located in a community whose population exceeds 5,000.

(12 C.F.R. § 7.1001), and recent judicial opinions construing the scope of section 92. See Interpretive Letter No. 753 (Nov. 4, 1996), *reprinted in* [1996-97] Fed. Banking L. Rep. (CCH) ¶ 81-107 (the “*First Union letter*”) (copy attached for your reference).

The *First Union letter* provides an extensive legal interpretation on the scope of activities permissible under 12 U.S.C. § 92.⁷ In particular, the OCC stated that the “place of 5,000” must be the national bank insurance agency’s business location for licensing purposes, and accordingly, that business records of the agency, including copies of customer application and policy information, and licensing, customer complaint, and other compliance records, must be available at the “place of 5,000.”⁸

The OCC also concluded in the *First Union letter* that a bank insurance 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 that is based in the “place of 5,000.” This will generally permit the following:

- Meetings with customers and solicitations and sales of insurance by the bank’s agents may generally 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.
- 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 inside and outside of the “place of 5,000,” including other branches of the same bank.
- Personnel at bank branches inside and outside of the “place of 5,000” may make referrals to the bank’s insurance agency.
- 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, including advertising support, direct mail marketing services, telemarketing services, payments processing, and other types of “back office” support.

⁷ The OCC noted in the *First Union letter* that this description was not intended to be exhaustive and that variations could be consistent with the general principles set forth in the letter.

⁸ The letter indicated, however, that business records may be maintained and available at the agency in electronic form, with the original hardcopy kept in off-site storage.

The proposed activities for national banks that you describe involve customer referrals and the distribution of informational materials on insurance. To the extent that the described activities constitute acting as an agent to sell insurance, they are within the scope of activities permitted by 12 U.S.C. § 92 and the OCC's *First Union letter*. The framework you propose for national banks conducting the activities appears consistent with the principles for applying section 92 set forth in the *First Union letter*. Section 92 also expressly permits national banks to receive fees or commissions for services rendered. 12 U.S.C. § 92. Accordingly, we find the activities you propose permissible for national banks and their subsidiaries under 12 U.S.C. § 92.

B. Authority of a National Bank to Act as a “Finder” under 12 U.S.C. § 24(Seventh)

A long line of OCC precedents and an OCC interpretive ruling authorizing national banks under 12 U.S.C. § 24(Seventh) to act as a “finder,” including bringing together a potential purchaser of insurance and the seller of the insurance, also permit the proposed activities.⁹ Interpretive Ruling 7.1002 provides:

- (a) *General*. A national bank may act as a finder in bringing together a buyer and seller.
- (b) *Qualification*. Acting as a finder includes, without limitation, identifying potential parties, making inquiries as to interest, introducing or arranging meetings of interested parties, and otherwise bringing parties together for a transaction that the parties themselves negotiate and consummate. Acting as a finder does not include activities that would characterize the bank as a broker under applicable Federal law.
- (c) *Advertisement and fee*. Unless otherwise prohibited, a national bank may advertise the availability of, and accept a fee for, the services provided pursuant to this section.

12 C.F.R. § 7.1002. This finder function is an activity authorized for national banks under 12 U.S.C. § 24(Seventh) as part of the business of banking. Hence, a national bank may engage in permissible insurance-related finder activities and receive a fee for these activities based on section 24(Seventh) rather than on 12 U.S.C. § 92.¹⁰ Some state laws may, however, treat

⁹ See e.g., 12 C.F.R. § 7.1002 (formerly 12 C.F.R. § 7.7200); Interpretive Letter No. 653 (Dec. 22, 1994), reprinted in [1994-95 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,601; Interpretive Letter No. 566 (Dec. 2, 1991), reprinted in [1991-92 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,320; Interpretive Letter No. 472 (Mar. 2, 1989), reprinted in [1989-90 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,008.

¹⁰ Notably, section 92 grants authorities to national banks “[i]n addition to the powers now vested by law in national banking associations.”

these finder activities as activities that constitute acting as an insurance agent under state law. Such a state law characterization does not alter the characteristics of what are permissible finder activities under federal law. But, where a state law characterizes finder activities as activities of an insurance agent, national banks should comply with the applicable state insurance licensing and other requirements.

In analyzing a national bank's proposed arrangement involving insurance activities for purposes of section 24(Seventh), various considerations may lead to the conclusion that certain activities are those of a finder. For example, the scope of activities proposed by the bank is one factor.¹¹ Another factor is whether there is another party or entity involved in the arrangement that is acting as an insurance agent or broker and actually conducting the insurance sales transactions.¹² We also examine whether any contractual or express agency relationship exists between the bank and the insurance company whose products are being offered and sold to customers.¹³ If so, we may inquire whether the relationship is typical of one in the insurance industry where an agent sells the policies of a particular company or companies. Further, the nature of the compensation received by the bank for its involvement in the activities may be a consideration, such as whether the compensation is based on the performance of a specific service (e.g., a flat fee), or otherwise differs from compensation typically paid to insurance agents.¹⁴

¹¹ For example, among other activities, as a finder the bank may engage in customer referral activities, provide brochures or other insurance-related materials, forward completed materials to an insurance agency or an insurer, provide listing services, and perform billing services to assist in the collection of premiums. See, e.g., Interpretive Letter No. 653 (Dec. 22, 1994), *reprinted in [1994-95 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,601*; Interpretive Letter No. 566 (Dec. 2, 1991), *reprinted in [1991-92 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,320*; Letter from Elizabeth H. Corey, Attorney, Southwest District (May 18, 1989).

¹² See, e.g., Letter from Asa L. Chamberlayne, Senior Attorney, Securities and Corporate Practices Division (Mar. 6, 1995) (bank refers customers to an independent insurance agency); Interpretive Letter No. 472 (Mar. 2, 1989), *reprinted in [1989-90 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,008* (insurer's licensed telemarketing employees contact customers); Letter from William B. Glidden, Ass't Director, Legal Advisory Services Division (May 8, 1986) (bank forwards completed insurance authorization forms to independent agency).

¹³ See, e.g., Interpretive Letter No. 472 (Mar. 2, 1989), *reprinted in [1989-90 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,008* (no agency agreement with insurer); Letter from Elizabeth H. Corey, Attorney, Southwest District (May 18, 1989) (same); Letter from James M. Kane, District Counsel, Central District (Jan. 30, 1987) (same).

¹⁴ See, e.g., Interpretive Letter No. 566 (Dec. 2, 1991), *reprinted in [1991-92 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,320* (fees based on a specific service); Letter from Elizabeth H. Corey, Attorney, Southwest District (May 18, 1989) (fee based on percentage of commissions); Interpretive Letter No. 472 (Mar. 2, 1989), *reprinted in [1989-90 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,008* (payment unrelated to placement of insurance coverage); Letter from William B. Glidden, Ass't Director, Legal Advisory Services Division (May 8, 1986) (payment involves portion of commissions generated as a result of referrals).

In summary, in determining that national bank finder arrangements are permissible in the insurance context, the OCC may examine: (1) the scope of the proposed activities; (2) the existence or absence of another insurance agent or broker in the arrangement; (3) whether the bank has a contractual relationship with an insurance company for selling its products, and, if so, the nature of the relationship; and (4) the bank's compensation arrangement for the proposed activities. This analysis reviews the extent of the bank's activities, including the precise nature of the bank's relationships with insurance companies and the payment the bank receives for its services. However, none of these factors alone are determinative of whether the bank's activities are those of a finder. Generally we would apply all of the factors to each set of facts and consider the entire situation.¹⁵

Specifically, in your situation, we note that the proposed activities for a national bank are limited to the referral of customers and the distribution of informational insurance materials. An independent corporation with its own insurance agents actually will solicit and sell the insurance policies, not the bank's employees. Further, as we understand it, there will be no relationship between the national bank and the insurance companies whose products are being sold to customers. The bank's compensation will be based on a percentage of the insurance premiums, commission, or net income generated as a result of the bank's referrals. Under the above analysis, we would conclude that the bank's proposed activities are permissible as those of a finder.¹⁶

C. Census Designated Places ("CDP's")

You also asked for confirmation that in unincorporated areas the OCC is using Census Designated Places ("CDP's")¹⁷ as the standard to determine if a branch qualifies as being located in a "place of 5,000" for purposes of 12 U.S.C. § 92. Please be advised that it has been our practice to treat an area as a "place" for purposes of section 92, if the area is designated a "place" by the United States Bureau of the Census. Accordingly, an unincorporated area would qualify as a "place of 5,000" if it were designated as a CDP.

If you should have any questions, please feel free to contact me at (202/874-5200) or Suzette H. Greco, Senior Attorney (202/874-5210).

¹⁵ We also recognize that banks may engage in other types of arrangements that may preclude analysis under these factors. These arrangements also may be permissible. Nothing in this letter is intended to foreclose banks from proposing or engaging in other arrangements so long as they are in compliance with all applicable laws.

¹⁶ As discussed previously in this letter, based on your representations, your particular arrangements and the framework you propose for conducting them also appear to satisfy the requirements necessary for a national bank to act as an "agent" for purposes of section 92.

¹⁷ CDPs currently are defined as densely settled concentrations of population that are identifiable by name, but are not legally incorporated places. See 1990 Census of Population and Housing, Finders Guide to Census Tract Reports, p. A-9. The 1990 census is the most current decennial census.

Sincerely,

/s/

Julie L. Williams
Chief Counsel