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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

**Interpretive Letter #844**  
**November 1998**  
**12 U.S.C. 92**

October 20, 1998

J. Michael Cutshaw, Esq.  
Phelps Dunbar, L.L.P.  
P.O. Box 4412  
Baton Rouge, LA 70802-5707

Re: Insurance Agency Activities in Louisiana Under 12 U.S.C. § 92

Dear Mr. Cutshaw:

This letter is in response to your request inquiring whether the Office of the Comptroller of the Currency (“OCC”) would object to national banks soliciting and selling insurance in Louisiana using the same means and facilities generally available to other Louisiana insurance agencies. Consistent with 12 U.S.C. § 92 and the *First Union letter*,<sup>1</sup> you represent that a national bank engaged in the banking business in Louisiana (the “Bank”) may establish the main location of a bank insurance agency subsidiary (“Bank Agency”) in a place of 5,000 or fewer inhabitants (“place of 5,000”) where the Bank also has a branch.<sup>2</sup> Accordingly, based on the representations in your letter and for the reasons discussed below, we do not object to the Bank soliciting and selling insurance in the manner permissible for insurance agencies generally in the state of Louisiana and as would be authorized by the Bank’s state insurance license.

## **I. BACKGROUND**

For purposes of this request, the factual situation you describe involves a national bank engaged in the banking business in Louisiana. After submission of the appropriate operating subsidiary application to the OCC and insurance agent license application to the Louisiana Department of Insurance (the “DOI”), and approval thereof, the Bank will establish an insurance agency subsidiary in a “place of 5,000” in which the Bank is located and doing business. The Bank and Bank Agency will operate in conformity with the requirements of section 92.

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<sup>1</sup> Interpretive Letter No. 753 (Nov. 4, 1996), *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-107 (the “*First Union letter*”) (extensive legal interpretation on the scope of insurance sales activities permissible for national banks under 12 U.S.C. § 92).

<sup>2</sup> Past OCC letters have referenced a “place of 5,000” as a place with a population of fewer than 5,000 inhabitants. However, the actual language of the statute states “any place the population of which does not exceed five thousand inhabitants.” Thus, the OCC clarifies that a “place” of exactly 5,000 inhabitants would satisfy the requirements of section 92.

## II. DISCUSSION

### A. Section 92 Authorizes Insurance Sales Activities for National Banks

Under 12 U.S.C. § 92, a national bank located and doing business in a place with a population of 5,000 or less may act as an agent for state-authorized insurance companies by soliciting and selling insurance, collecting premiums, and receiving commissions and fees for these services from the insurance company.<sup>3</sup> By its terms, section 92 does not require a bank's insurance solicitation and sales activities to occur within the "place of 5,000." Specifically, there is no restriction as to either the location of customers or the methodology of sale.

Congress explicitly vested the OCC in section 92 with the authority to prescribe rules and regulations concerning national banks' insurance sales activities.<sup>4</sup> 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 place the population of which does not exceed 5,000 inhabitants, even if the main office of the bank is located elsewhere.<sup>5</sup>

The Supreme Court in *Barnett Bank of Marion County, N.A. v. Nelson* examined the language of section 92 and found that section 92 suggests "a broad, not limited permission" for national

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<sup>3</sup> Section 92 states:

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.

<sup>4</sup> See *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. \_\_\_, 116 S. Ct. 1103, 1108 (1996); *NBD Bank, N.A. v. Bennett*, 67 F.3d 629, 632 (7th Cir. 1995).

<sup>5</sup> 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 (formerly 12 C.F.R. § 7.7100); see also Interpretive Letter No. 823 (Feb. 27, 1998) (census designated place is a "place" for purposes of section 92).

banks to act as the agent for insurance sales.<sup>6</sup> Other courts have followed a fundamentally similar approach in establishing that while the bank or branch must be located in a “place of 5,000,” section 92 does not place any geographic restrictions on potential or existing customers to whom a bank or branch may sell insurance pursuant to section 92.<sup>7</sup>

**B. The “First Union letter” Analyzes the Scope of Insurance Sales Activities Permissible for a Bank Insurance Agency Under Section 92**

Following this judicial precedent, the OCC has construed the language of section 92 to permit national banks to engage in a range of agency insurance activities in conformity with section 92's “place of 5,000” framework. The OCC's *First Union letter* provides an extensive legal interpretation on the scope of activities permissible under 12 U.S.C. § 92. The OCC's letter considers 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 (12 C.F.R. § 7.1001), and recent judicial opinions construing the scope of section 92.<sup>8</sup>

In applying section 92 in the modern context, the OCC found in the *First Union letter* that 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 to unique restrictions or disabilities relative to insurance agents generally in a particular state. Further, given the flexibility with which banks and insurance agents operated in 1916, the OCC found it is entirely consistent with section 92'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 Union letter* distills several general principles to define the scope of solicitation and sales activities permissible for national banks under 12 U.S.C. § 92.<sup>9</sup> In particular, the OCC stated that:

- The [bank insurance] agency located in the “place of 5,000” must, of course, be bona fide. . . . Agents will be managed through the agency and the “place of 5,000” will be

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<sup>6</sup> 517 U.S. \_\_\_, 116 S.Ct. 1103, 1108 (1996).

<sup>7</sup> See *NBD Bank, N.A. v. Bennett*, 67 F.3d 629 (7th Cir. 1995); *Independent Ins. Agents v. Ludwig*, 997 F.2d 958 (D.C. Cir. 1993).

<sup>8</sup> See Interpretive Letter No. 753 (Nov. 4, 1996), *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-107.

<sup>9</sup> The OCC noted in the *First Union letter* that the principles described are not intended to be exhaustive and recognizes that solicitation and sales techniques may vary with different marketing strategies employed by different banks and still be consistent with the general principles described in the *First Union letter*.

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."<sup>10</sup>

The OCC also indicated 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 licensed insurance agencies in the state in which the bank insurance agency operates. 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.

The OCC noted in the *First Union letter* that 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-- but did not delineate or curtail how these activities were to be conducted by bank insurance agencies. The letter

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<sup>10</sup> Some of these business records may be maintained and available at the agency in electronic form, with the original hardcopy kept in off-site storage.

further provided that “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.”<sup>11</sup> Hence, the *First Union letter* concluded that the proposed insurance agency activities occurring both inside and outside of the “place of 5,000” were permissible under section 92.<sup>12</sup>

With respect to the current request, you represent that the Bank Agency’s business location for licensing purposes will be in a “place of 5,000” once established, and that the Bank and Bank Agency will conduct their activities in accordance with the *First Union letter’s* principles. Specifically, you point out that Louisiana law permits an insurance agency, particularly a bank-established agency, to conduct business at locations in addition to the agency’s business location shown in its insurance license. You represent that the operations of the Bank Agency would be conducted at such “satellite office” locations that would be permissible under Louisiana law for nonbank agencies as well as for insurance agencies operated by state banks.

### **C. Louisiana Law Authorizing Insurance Sales Activities**

Louisiana insurance law provides generally that once an insurance agency is established it may then conduct its business from other locations. The Insurance Code provides, in part:

Any insurance agency operating at more than one location shall notify the Commissioner of Insurance of each branch location business address within ten days from the date of the opening of the new location. There must be at least one licensed agent or solicitor with a power of attorney registered with the Commissioner in each branch location.<sup>13</sup>

This provision is applicable to all insurance agencies generally, whether affiliated with a bank or not.

In 1997, the Louisiana legislature adopted two bills applicable to the sale of insurance by banks in the state of Louisiana.<sup>14</sup> The Louisiana Insurance Code now provides that the Commissioner of Insurance will issue appropriate licenses for national and state banks and

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<sup>11</sup> *First Union letter, supra* at 33.

<sup>12</sup> Eight national bank subsidiaries of First Union Corporation, Charlotte, North Carolina, submitted notification to the OCC of their intent to establish operating subsidiaries to engage in certain general insurance agency activities pursuant to 12 U.S.C. § 92, including activities occurring inside and outside of the “place of 5,000.”

<sup>13</sup> La. Rev. Stat. Ann. § 22:118C.(1)(b).

<sup>14</sup> See 1997 La. Act No. 606 § 1 (House bill 1362); 1997 La. Act No. 1475 § 2 (House bill 2509).

their respective subsidiaries and employees to engage in insurance activities as agent. Specifically, the insurance law provision states:

The commissioner shall license any qualified state or national bank, bank holding company, or any subsidiary or employee thereof to engage in any insurance or annuity activity as authorized by R.S. 6:242, as an agent, broker, or solicitor.<sup>15</sup>

Under R.S. 6:242 of the Louisiana Banking Code, state banks have the power:

(6)(a) To act as the agent for any insurance company authorized to do insurance business in this state by soliciting and selling insurance and to receive for services so rendered such lawful commissions or fees as may be agreed upon between the bank and the insurance company for which it is acting as agent. The location of the insurance agency shall be the address shown on the license application submitted to the Department of Insurance pursuant to the provisions of the Louisiana Insurance Code, notwithstanding the conduct of insurance sales activities at other locations.<sup>16</sup>

In sum, the banking code provision specifically provides that the location of the bank's insurance agency will be the address as submitted on the license application, notwithstanding bank insurance agency activities being conducted at other locations, and the state insurance law specifically provides that the insurance commissioner shall license state and national banks to engage in the insurance agency activities as authorized under the state banking code. Thus you maintain that the establishment of insurance agency "satellite office" locations outside of a "place of 5,000" would be permissible under state law both for nonbank insurance agency operations and for state banks.

**D. Louisiana National Bank Insurance Agency Locations Outside of a "Place of 5,000"**

Given the status of the Louisiana state law with respect to other locations for conducting insurance sales activities, you have asked us not to object if a national bank insurance agency located in a "place of 5,000" also does business through satellite offices at other locations outside of a "place of 5,000." As described earlier in this letter, section 92 and the *First Union letter* do not prohibit national banks from conducting their insurance solicitation and sales activities from outside the "place of 5,000." In fact, the *First Union letter* recognizes that national bank insurance agencies located in a "place of 5,000" should be permitted the

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<sup>15</sup> La. Rev. Stat. Ann. § 22:1113 G. (Supp. 1998) (emphasis added).

<sup>16</sup> La. Rev. Stat. Ann. § 6:242 A.(6)(a)(Supp. 1998) (emphasis added).

same marketing range and be able to use the same marketing tools and facilities as generally available under state law for licensed nonbank insurance agencies or licensed agents with offices in a “place of 5,000.”

In Louisiana, state law expressly contemplates that insurance agencies will operate from more than one location. Similarly, state law authorizes the Commissioner of Insurance to license both state and national banks to solicit and sell insurance “as authorized by R.S. 6:242” of the Louisiana Banking Code. The cited provision, moreover, specifically provides that the location of such a bank-established insurance agency is the address on the license, notwithstanding that insurance sales activities occur at other locations. Thus, for a national bank in Louisiana, the use of the same methods and facilities available to licensed insurance agencies generally, as well as to state bank insurance agencies, includes the ability of the national bank insurance agency to establish locations of the agency outside of the “place of 5,000” and to engage in insurance sales activities at those locations.<sup>17</sup>

### **III. CONCLUSION**

Accordingly, based on the foregoing facts and discussion, and the representations made in your incoming letter, we do not object to national banks or their subsidiaries, if licensed under Louisiana law, relying on section 92 and the *First Union letter*, soliciting and selling insurance in the same manner permissible in the state of Louisiana for insurance agencies generally and for bank-established insurance agencies in particular. If you should have any questions, please feel free to contact me (202/874-5200) or Suzette H. Greco, Senior Attorney (202/874-5210).

Sincerely,

/s/

Raymond Natter  
Acting Chief Counsel

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<sup>17</sup> As you mentioned, other locations or so-called “satellite offices” will enable the Bank to serve its insurance customers more efficiently, and also will help the Bank meet the competitive challenge of other insurance agencies which are subject to no geographic limitations in Louisiana.