



Department of Banking, Insurance, Securities & Health Care Administration

REVISED JULY 2, 2001

PLEASE NOTE: Only [section 3.C](#) on proper disclosures of banks sales of insurance is being revised at this time to reflect the provisions of the new federal rules on consumer disclosures in bank sales of insurance. There will be further revisions to Bulletin 117 later this year to reflect other changes under the federal Gramm-Leach-Bliley Financial Modernization Act of 1999.

Vermont Insurance Division Bulletin 117 Guidelines for Insurance Sales by Banks

Section 92 of the National Bank Act permits national banks located and doing business in any place with a population of not more than 5,000 inhabitants to act as the agent for any fire, life or other insurance company authorized by the authorities of the State to do business there. In *Barnett Bank v. Nelson*, 116 S.Ct. 1103 (1996), the United States Supreme Court unanimously determined that, despite state laws forbidding banks or their affiliates from engaging in insurance sales, national banks could act as agents in the sale of insurance under the authority of Section 92.

As a result, § 4811 of Title 8, Vermont Statutes Annotated, which limits the ability of banks to sell insurance, is preempted by Section 92 for any national bank with a main office or branch and a *bona fide* agency in a place with not more than 5,000 inhabitants. (See letter of Julie Williams, Chief Counsel, Comptroller of the Currency, to First Union Corporation, November 4, 1996.) Vermont banking law contains the so called "wild card," "parity plus" or "expanded powers" section, 8 V.S.A. § 606(a). This law was enacted to place Vermont state-chartered banks on an equal footing with national banks by providing state-chartered banks with the powers conferred on national banks by federal law. Section 606 permits any Vermont state-chartered bank to act as an agent in the sale of insurance to the same extent national banks are so permitted.

The Commissioner's position is that all banks acting as agents in the sale of insurance in Vermont must comply with all applicable insurance laws, including those on licensure. Other applicable insurance laws include the requirement to act only on behalf of Vermont-authorized insurance companies (8 V.S.A. §§ 3301, 3361) offering Vermont-

approved insurance products (8 V.S.A. § 3541), the prohibition against rebating (8 V.S.A. § 4724(8)), and the prohibition against coercion of debtors (8 V.S.A. § 4725) (also addressed in federal banking law as the prohibition against "tying"). Banks acting as insurance agents are also expected to take all reasonable steps to avoid consumer confusion. This document sets forth the Commissioner's position about the applicability of insurance laws on bank and bank-affiliated insurance activities permitted as a result of the *Barnett* decision, and what banks are expected to do to avoid consumer confusion.

These Guidelines apply only to the authority to sell insurance resulting from the *Barnett* decision, and therefore do not apply to the sale of credit insurance by banks under 8 V.S.A. § 4811. The ability of banks to sell annuities originates in other federal authority, and so continues to be subject to Banking Bulletin No 18. Therefore, these Guidelines do not address annuities sales by banks.

Banks that are eligible to engage in the sale of insurance as described above that either have their main office or a full service branch (an automated teller machine is not considered a full service branch under these guidelines) in a "place" with a population of not more than 5,000 inhabitants may engage in the business of insurance as an agent or through a *bona fide* insurance agency located in that "place." To date, the Comptroller has not issued an opinion interpreting the word "place" as used in the relevant section of the National Bank Act. If such an opinion is issued by the Comptroller, the Commissioner will reconsider these guidelines as they pertain to the meaning of the word "place" at that time. Until such reconsideration, the Commissioner will view "*the particular county and city, town or village*" where a bank's full service banking operations are carried on, (see for example 12 U.S.C. § 22 **Second**), as the "place" which must have a population of not more than 5,000 inhabitants. The Commissioner will determine the population of a "place" by using the most recent U.S. decennial census. An agency located in a place of not more than 5,000 that conducts its business in the manner described by Julie Williams, Chief Counsel, Comptroller of the Currency, to First Union Corporation, November 4, 1996, will be considered a *bona fide* insurance agency under these Guidelines. According to Ms. Williams' opinion:

The agency located in the "place of 5,000" must. . . be *bona fide*. [An agency will be considered *bona fide* if its] agents will be managed through the agency and the "place of 5,000" will be the agency's business location for licensing purposes. [The] agency will be responsible for collecting commissions from insurance carriers and paying commissions to its licensed sales staff. The agency [will be generally] 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." 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." (footnote omitted) 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.

Williams' letter, pages 33 and 34 and footnote 160.

1. Licensing.

Any individual or entity soliciting applications for insurance or negotiating policies of insurance in Vermont must be licensed as an insurance agent (including required non-resident licenses, where appropriate). Bank employees or other individual bank representatives soliciting or negotiating policies of insurance must be licensed as insurance agents. Insurance agent licensing is governed largely by 8 V.S.A. chapter 131. Vermont law defines an insurance agent as an individual appointed by an insurer who solicits or negotiates a policy of insurance for an insurer. A separate appointment is required from each insurance company an individual insurance agent represents. Vermont law also requires any person, partnership, association or corporation to be licensed as an insurance agent if it acts as or holds itself out to be an insurance agent.

Individuals within an insurance agency engaged in purely clerical tasks are not required to be licensed. A clerical task, a task associated with record keeping or file management, does not require the insurance expertise of an agent. Similarly, a bank employee performing only clerical tasks related to the bank's insurance agency function would not be required to be licensed. However, only properly licensed individuals, possessing the

expertise and knowledge of an insurance agent, should be giving advice about insurance or selling insurance.

A bank, like any other entity, must be licensed if it contracts with an insurance sales entity and shares in commissions paid by insurance companies for the sale of insurance products. Licensure is required if a bank enters into such a third-party relationship and is compensated based on the volume of insurance applications or insurance sales. Receiving upstreamed dividends from an insurance sales subsidiary of a bank by the parent bank will not be considered commission sharing, and will not, without more, require the bank to be licensed as an insurance agent.

Licensure will be required of banks, insurance agencies, or any other non-insurer entities which employ or otherwise contract with individual insurance agents. The Department currently anticipates that this requirement will become effective for all agencies as of April 1, 1998. Entity licensees will not be required to obtain appointments from insurers, provided all insurance is placed with insurers by licensed individuals with appropriate appointments. This requirement will be in addition to the requirement to license individuals acting as agents. The Insurance Division will publish a bulletin further describing this requirement.

Questions about how to apply for an insurance agent's license should be directed to the Agent Licensing Supervisor, at (802) 828-3303.

2. Use of authorized companies and authorized products.

Vermont law requires an insurance company to be licensed or otherwise authorized by the Commissioner to do insurance business before it can sell insurance in Vermont. The companies that are currently licensed or authorized are listed in the Annual Report of the Insurance Commissioner. The report can be obtained from the company licensing section of the Insurance Division at (802) 828-2470.

All insurance products must be reviewed and approved by the Insurance Division before they can be sold or issued for delivery in Vermont. Any insurance company wishing to sell or issue insurance policies in Vermont should be able to show that it has obtained all appropriate approvals from the Insurance Division. Banks may only sell insurance products that have been approved for sale by the Commissioner and that are offered by licensed insurance companies.

3. Sales practices.

The sale of insurance is subject to the provisions contained in 8 V.S.A., chapters 129 and 131, among others. Banks should develop and implement policies and procedures to ensure that insurance product sales activities are conducted in compliance with Vermont insurance statutes and regulations, just as they do to ensure that banking activities are conducted in compliance with federal and state banking statutes and regulations. The Commissioner urges particular attention to the requirements of 8 V.S.A., chapter 129,

Insurance Trade Practices; and Regulation 79-2, Fair Claims Practices. A bank is responsible to provide its agents and employees with proper instruction and supervision. The Commissioner recommends the development and use of appropriate procedures for review of a bank's insurance sales program. Bank personnel involved in selling insurance products must adhere to fair and reasonable sales practices. The Commissioner recommends that banks adopt effective management and internal audit compliance reviews concerning such practices. Any compliance procedures should also provide for a system to monitor customer complaints and their resolution. To discharge the bank's supervisory responsibilities, the Commissioner recommends that a bank's compliance procedures should also call for verification that third-party sales are being conducted in a manner consistent with the governing agreement with the bank, where applicable.

(A) *Tying and packaging.* Banks are prohibited from requiring the purchase of insurance from the bank itself or any affiliated insurance agency, as a condition for the bank to establish a deposit account, to extend credit, lease or sell property of any kind, fix or vary the consideration for any such extension of credit, lease, sale or service, or for any other service offered by the bank or its affiliates.

A bank may offer to sell an insurance product in combination with a banking product or a combination of banking products only if there is no reduction in cost to the customer for the products as a result of the addition of the insurance. Although a bank may bundle certain traditional bank products and present a package to a customer at a reduced rate, the addition of an insurance product to the bank package may not have a cost which is any different than the cost would be for the bank package and the insurance product separately. No person shall require or imply that the purchase of an insurance product from a bank by a customer or prospective customer of the bank is required as a condition of, or is in any way related to, the lending of money or extension of credit, the establishment or maintenance of a trust account, the establishment or maintenance of a deposit account, or the provision of services related to any such activities, or for any other service offered by the bank or its affiliates.

If insurance is required as a condition of obtaining a loan, the credit and insurance transactions shall be completed independently and through separate documents. A loan for premiums on required insurance shall not be included in the primary credit without the written consent of the customer.

(B) *Anti-rebating.* Vermont law prohibits the use of rebates by an insurance agent. A rebate is anything of value given, directly or indirectly, by an insurance agent as inducement to purchase an insurance policy. For example, a rebate occurs when an agent attempts to make a sale by agreeing to lower its commission on the sale in order to lower the purchase price of the insurance. An agent must charge the purchaser the price which has been filed with the Department by the insurance company the agent is representing.

(C) *Proper disclosures.* Any solicitation or sale of an insurance product by a bank shall occur in a manner that assures that the insurance is clearly differentiated from deposit products insured by the Federal Deposit Insurance Corporation (FDIC) and

from products which are obligations of the bank. To accomplish this, the bank shall provide written disclosure in 10 point type or larger before the sale of an insurance product and written or oral disclosure with solicitations of insurance products. Appropriate disclosure is also required when a bank affiliate, subsidiary or agency uses the bank's name with its solicitation or refers to its relationship to the bank such that it appears to a customer that the bank may have a beneficial interest in the sale by the bank affiliate, subsidiary or agency. All such disclosures shall, at a minimum, clearly specify that:

(a) Insurance disclosures. In connection with the initial purchase of an insurance product or annuity by a consumer from you, you must disclose to the consumer, except to the extent the disclosure would not be accurate, that:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the bank or an affiliate of the bank;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the bank, or (if applicable) an affiliate of the bank; and

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value.

(b) Credit disclosure. In the case of an application for credit in connection with which an insurance product or annuity is solicited, offered, or sold, you must disclose that the bank may not condition an extension of credit on either:

(1) The consumer's purchase of an insurance product or annuity from the bank or any of its affiliates; or

(2) The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

The disclosure shall be made orally during any sales presentation, when advice concerning insurance products is provided, and both orally and in writing prior to or at the time insurance is sold. The minimum disclosures should also be clearly conveyed in telemarketing contacts.

Brochures, signs, or other written material containing information about both FDIC-insured deposits and insurance products should clearly segregate information about insurance products from the information about deposits. Disclosure shall be incorporated into all advertisements and other promotional materials. Abbreviated disclosures in the manner permitted by the Joint Interpretation of the Interagency Statement on Retail Sales of Nondeposit Investment Products will be acceptable for

the insurance products which are the subject of these Guidelines, although these Guidelines do not cover identical products.

The disclosure shall be presented in a clear and concise manner.

FOR THE FORM AND CONTENT OF THE WRITTEN DISCLOSURE AND RELATED MATTERS, SEE: [INSURANCE DIVISION BULLETIN 132](#), ISSUED CONCURRENTLY WITH THIS REVISION OF BULLETIN 117, AND THE FORMS ATTACHED TO BULLETIN 132.

Banks may provide any additional disclosures that further clarify the risks involved with insurance, provided that overall disclosure remains short and readily understandable to the consumer.

Confirmations and account statements for insurance products shall contain the disclosure if the confirmations or account statements contain the name, trade name or the logo of the bank or an affiliate. Abbreviated disclosures in the manner permitted by the Joint Interpretation of the Interagency Statement on Retail Sales of Nondeposit Investment Products will be acceptable for confirmations and account statements for the insurance products which are the subject of these Guidelines. Confirmations and account statements provided by third parties unaffiliated with the bank need not make the disclosure on confirmations and account statements that may incidentally, with a valid business purpose, contain the name, trade name or logo of the bank. If a customer's periodic deposit account statement includes account information concerning the customer's insurance products, the information concerning insurance products should be clearly separate from the information concerning the deposit account and should be introduced with the disclosure and the identity of the entity conducting the nondeposit transaction.

(D) *Physical layout.* Selling or recommending insurance products on the premises of a bank may give the impression that the products are FDIC-insured or are obligations of the bank. To minimize customer confusion with deposit products, sales or recommendations of insurance products on the premises of a bank should be conducted in a physical location distinct from the area where retail deposits are taken. Signs or other means should be used to distinguish the insurance sales area from the retail deposit-taking area of the bank. However, in the limited situation where physical considerations prevent sales of insurance products from being conducted in a distinct area, the institution has a heightened responsibility to ensure appropriate measures are in place to minimize customer confusion.

In no case shall tellers or other employees, while located in the routine deposit-taking area, such as the teller window, make general or specific recommendations regarding insurance products, or evaluate a customer's eligibility for such products, even if initiated by the customer. Tellers and employees who are not authorized to sell insurance products may refer customers to individuals who are licensed insurance agents.

(E) *Dual employees.* An officer or employee of a bank may be an officer or employee of an affiliated agency. An employee of a bank may perform both insurance and financial functions.

(F) *Financial Privacy.* Use of customer financial information by a bank is restricted by Vermont and federal law. The Financial Privacy Act (8 V.S.A. §§1021-1025) and the Federal Fair Credit Reporting Act (15 U.S.C. §1681 *et seq.*) are applicable to use of customer financial information for the purpose of selling insurance. Issues regarding financial privacy will be addressed in a separate document by the Banking Division of the Department.

June 13, 1997

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ELIZABETH COSTLE, Commissioner