



**ARKANSAS INSURANCE DEPARTMENT  
LEGAL DIVISION**

1200 West Third Street  
Little Rock, AR 72201-1904  
501-371-2820  
FAX 501-371-2629

**BULLETIN 2-2000**

June 15, 2000

**TO:** ALL LICENSED INSURERS, HEALTH MAINTENANCE ORGANIZATIONS, HOSPITAL OR MEDICAL SERVICE CORPORATIONS, INSURER TRADE ASSOCIATIONS, THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS (NAIC), ALL LICENSED INSURANCE AGENCIES, MANAGING GENERAL AGENTS & AGENCIES, AGENT TRADE ASSOCIATIONS, ARKANSAS STATE BANK DEPARTMENT, ARKANSAS BANKERS ASSOCIATION, ARKANSAS COMMUNITY BANKERS ASSOCIATION, THE ARKANSAS CREDIT UNION LEAGUE, THE MORTGAGE BANKERS ASSOCIATION OF ARKANSAS, THE ARKANSAS LEAGUE OF SAVINGS INSTITUTIONS, THE FEDERAL RESERVE BOARD, THE UNITED STATES OFFICE OF THE COMPTROLLER OF THE CURRENCY, THE UNITED STATES OFFICE OF THRIFT SUPERVISION, THE FEDERAL DEPOSIT INSURANCE CORPORATION, & OTHER INTERESTED PARTIES

**FROM:** ARKANSAS INSURANCE DEPARTMENT

**RE: INTERIM GUIDELINES FOR INSURANCE AGENT LICENSING FOR COMPLIANCE WITH THE GRAMM-LEACH-BLILEY ACT (S. 900)**

On November 12, 1999, the President of the United States signed into law the GRAMM-LEACH-BLILEY ACT ("Act" or "Federal Act" or "GLB Act"), which makes significant changes to the delivery of financial services in the United States. The Federal Act has the following effective dates:

- a) **November 12, 1999** Sections concerning bank -insurance affiliations, sales, & cross marketing were effective;
- b) **March 12, 2000** Sections on financial holding companies were effective;
- c) **May 12, 2000** Sections on Federal privacy rules shall be effective;
- d) **August 12, 2000** OCC regulations for financial and operating subsidiaries are due;
- e) **November 12, 2000** Banking agency rules for insurance customer protections are due; and
- f) **November 12, 2002** Activation of the "National Association of Registered Agents & Brokers" will occur unless obviated by the actions of a majority of the States.

Based upon the provisions of the new law, several provisions of the Arkansas Insurance Code are preempted as applied to financial institutions and other affiliated entities who wish to exercise powers granted under Federal law to engage in the business of insurance in Arkansas.

The Insurance Commissioner must carry out the responsibilities to regulate the sale of insurance in Arkansas; and the Arkansas General Assembly may not have the opportunity to address these issues until the next regular State Legislative Session convenes in January of 2001. Therefore, it is in the best public interest to provide interim guidance for the licensing of financial or lending institutions and other affiliated entities as insurance agents in this State.

In response to recent inquiries from the Arkansas insurance and financial industries concerning the new Act, it is prudent to provide an outline of licensing guidelines, which reflect the new Federal framework. These guidelines are intended to assist industry in making informed business decisions under the new Federal law until the Arkansas Legislature can consider appropriate statutory changes.

### **PREEMPTION OF CERTAIN STATE LAWS**

The Arkansas Insurance Code, as it now exists, would prohibit the agent licensure of the following entities:

1. a depository institution, called a "lending institution" under Ark. Code Ann. §23-64-202(b)(4)(A) or "financial institution" under Ark. Code Ann. §23-64-203(b);
2. a "savings association" as defined in 12 U.S.C. §1813;
3. a "financial holding company" as defined in Section 2 of the Federal Bank Holding Company Act of 1956, as amended by the Act;
4. a "financial subsidiary" as defined in Section 121 of the Act; and
5. a "state bank" as defined in 12 U.S.C. §1813, organized under the laws of a state other than Arkansas (a non-resident state bank).

The "Place of 5,000" restriction in the Arkansas Insurance Code in Ark. Code Ann. §23-64-202(b)(1)(A), et seq., or §23-64-203(b) is in part preempted by §104(e) of the Gramm-Leach-Bliley Act. A full line or unrestricted Arkansas insurance producer license will now be available for any insurance agency which can demonstrate that it is a separate subsidiary or affiliate of a lending institution (bank); and which can file with the Department a current Federal Reserve Board certification to demonstrate the credentials of its parent or affiliate (owner) as a "financial holding company" (as opposed to a bank); or alternately file a certificate from the OCC for national banks, or a certification from the Arkansas State Bank Department for state banks.

Internal bank agents which cannot so qualify remain subject to the "Place of 5,000" restriction as to insurance producer licenses under the GLB Act and Arkansas law. For purposes of insurance producer licenses, the Act makes a distinction between "financial subsidiaries" and "operating subsidiaries"; the latter must be located in a Place of 5,000 (or less) in order to obtain a full line (unrestricted) insurance agent or agency license, unless the Bank parent of that Bank Agency obtains letter-approval for a "financial subsidiary" from the Office of the Comptroller of the Currency, or the Arkansas State Bank Department. See GLB Act §121 and the new proposed (draft) OCC Rule §5.34 and §§5.39 (e) and (f). Refer also to the Parity Resolution of the Arkansas State Bank Department.

These GLB Act requirements for Bank agents do not replace, but are in addition to, the customary licensing standards under the Insurance Code for all agents and agencies, such as filing of license fees and insurance company appointments.

## OWNERSHIP OF A MANAGING GENERAL AGENCY

Ark. Code Ann. §§23-64-201, et seq., and §§23-64-401, et seq., are preempted by §104(d)(2) of the Gramm-Leach-Bliley Act if or to the extent that the Arkansas Insurance Code does not contemplate that a lending institution, financial holding company, or financial subsidiary of a lending institution may be licensed as a managing general agent or agency in Arkansas. As a result of this preemption, any of these entities may obtain a managing general agent's or agency's license by complying with the applicable statutory requirements of Ark. Code Ann. §§23-64-201, et seq., and §§23-64-401, et seq., to the extent not in direct conflict with the Federal Act provisions.

## CONSUMER PROTECTIONS

Financial holding companies, depository institutions, lending institutions, financial subsidiaries and operating subsidiaries of lending institutions which are licensed and selling insurance in Arkansas under authority provided by the Gramm-Leach-Bliley Act, or the Parity Resolution of the Arkansas State Bank Department, are subject to all consumer protection requirements imposed by Arkansas law, including trade practices under Ark. Code Ann. §§23-66-201, et seq., and §§23-66-301, et seq., and companion Arkansas Insurance Rules and Regulations 43 and 44 promulgated thereunder.

Many of the measures required to protect against possible consumer abuses and unfair competition by a lender who is also selling insurance are included in the Federal anti-tying provisions of 12 U.S.C. §1972, and the disclosure provisions of the February 15, 1994 Interagency Statement on Retail Sales of Non-Deposit Investment Products, issued jointly by Federal bank regulatory agencies. Adherence to those standards is certainly warranted, but will not provide an exemption from compliance with Arkansas State laws and regulations applicable to insurance agents, agencies and other licensees.

The new Federal law specifically preserves State consumer protection statutes, and the Department will continue enforcement of statutes regulating certain aspects of conduct by lending institution agents or their subsidiaries. The Federal Act provides that sales of insurance inside the bank must be done in a physical area separate from the teller cages, i.e., bank areas where customer deposits are made. Attached as **APPENDIX # 1** is a chart showing the 13 Federal "Safe Harbor" provisions and the Arkansas Code counterpart or nearest equivalent, which permit the Department to treat banks differently from other insurance agents.

All entities addressed in these interim guidelines are encouraged to review carefully the Federal and State laws governing the business of insurance to ensure compliance with all applicable Federal and State requirements.

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## INTERIM GUIDELINES FOR ISSUANCE OF A LICENSE TO A LENDING INSTITUTION OR OPERATING SUBSIDIARY IN ARKANSAS

A depository corporation or lending institution as defined in 12 U.S.C. §1813, or an operating subsidiary of a lending institution, as defined in Section 2 of the Federal Bank Holding Company Act of 1956, may be licensed as an insurance agent, broker, consultant, managing general

agent or agency in this State under the applicable requirements set out in Ark. Code Ann. §§23-64-201, et seq.

"Operating subsidiaries" of banks (as opposed to "financial subsidiaries") can transact business under the GLB Act only to the extent that banks can; therefore, banks in towns of over 5,000 in population must sell through financial subsidiaries, not "operating subsidiaries". Section 5.34 of the proposed OCC rules basically supports this view, saying that operating subsidiaries are permitted to engage in activities that the OCC has permitted a national bank to engage in directly "either as part of, or incidental to, the business of banking . . . or otherwise under other statutory authority...". The "Place of 5,000" Rule applies to the employee of the bank doing direct sales.

## **INTERIM GUIDELINES FOR ISSUANCE OF A LICENSE TO A FINANCIAL HOLDING COMPANY OR FINANCIAL SUBSIDIARY IN ARKANSAS**

Under the provisions of Section 103 of the Gramm-Leach-Bliley Act, a "financial holding company" or a bank may own a licensed insurance agency. The insurance agency owned in whole or in part by a financial holding company or a bank must be licensed according to all applicable requirements set out in the Arkansas Insurance Code under Ark. Code Ann. §§23-64-201, et seq., to the extent not in direct conflict with the Federal Act. Those include filing the Federal Reserve Board, OCC or Arkansas State Bank Department, credentials for such agency as outlined above.

Under GLB Act Section 121, national bank financial subsidiaries are permitted to engage in activities that are financial in nature (and activities related thereto) in which national banks themselves are not permitted to engage. Arkansas state-chartered banks are permitted to engage in similar activities through organized state bank financial subsidiaries as authorized by the State Bank Commissioner under his authority pursuant to A.C.A. §23-47-101(c), which allows state banks parity with national banks in establishment of financial subsidiaries. Selling insurance would be considered an activity that's financial in nature, so financial subs can sell insurance. The insurance agency which is a financial subsidiary of a lending institution (bank) would obtain licenses with the Department by filing the required forms and documents and fees, as well as the OCC or Arkansas State Bank Department form letters certifying it as a "financial subsidiary" of a bank.

Practical Tip - How does an observer tell the difference between "an operating subsidiary" (which would be limited to insurance sales in its home office in the town of 5,000 or less), versus a "financial subsidiary", which would have no such limitation? When dealing with a financial subsidiary, it should present a copy of an OCC or Arkansas State Bank Department form letter approving the financial subsidiary of the well managed, well capitalized bank requesting same. The Department will require such a letter in connection with issuance of full line license for bank insurance activities based in places of greater than 5,000 population. Instead of an OCC letter-approval, the documentation would be a Federal Reserve Board certification of approval if the owner of the applicant insurance agency is a Financial Holding Company, as opposed to a bank. Applicant agencies without those credentials will be presumed to be "operating subsidiaries", and may apply for insurance licenses only for home offices eligible under the "Place of 5,000 Rule".

## **INDIVIDUAL APPLICANTS**

The provisions of the GBL Act and Arkansas law, prohibiting the licensing of bank agents and employees, do not apply if the bank agency becomes licensed and the licensed bank employee is selling insurance under the umbrella of that licensed agency.

Individual license applicants, when that individual is a bank employee in a town of over 5,000 and will not be working for a licensed bank agency, would be prohibited from being licensed. In other words, banks

and bank employees/agents selling insurance directly, not through separate and appropriately qualified "financial subsidiaries" or affiliates of "financial holding companies", remain restricted by the "Place of 5,000" Rule.

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**STEPS TO OBTAIN LICENSES:**

- 1) COMPLETE THE BANK AGENCY APPLICATION FORM **1-56** ATTACHED IN **APPENDIX #2**, USING THE ENCLOSED INSTRUCTIONS.
- 2) COMPLETE THE REQUIRED FORMS FOR INFORMATION ABOUT INDIVIDUAL AGENTS WHO ACT FOR THE BANK AGENCY.
- 3) INCLUDE ANY APPROPRIATE CERTIFICATIONS FROM THE FEDERAL RESERVE BOARD OR LETTER-RULINGS FROM THE OCC, OR ARKANSAS STATE BANK DEPARTMENT.
- 4) NON-RESIDENT BANKS & SUBSIDIARY AGENTS SHOULD INCLUDE HOME STATE INSURANCE LICENSE CERTIFICATIONS.
- 5) CALL THE INSURANCE DEPARTMENT AT 501-371-2750 FOR ANY LICENSE FORMS NOT INCLUDED IN **APPENDIX #2** OF THIS BULLETIN.
- 6) SUBMIT THE PACKET TO THE DEPARTMENT LICENSE DIVISION, INCLUDING THE FEES LISTED & INSURANCE COMPANY APPOINTMENT FORMS.

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In summary, as with all licensed insurance agents, a lending institution, its financial subsidiaries, and their employees who are engaged in sales and solicitation of insurance in this State must hold the appropriate Arkansas insurance license for each line, class or subclass of insurance being offered.

**TO CONTACT THE ARKANSAS DEPARTMENT OF INSURANCE**

To obtain agent or other license applications, call 501-371-2750 or visit the Department's web site at

**[www.state.ar.us/insurance](http://www.state.ar.us/insurance)**

To notify the Department of a change in ownership of an agency or other licensee, write to or call the

**Arkansas Insurance Department  
License Division  
1200 West Third  
Little Rock, AR 72201-1904  
Phone 501-371-2750  
Facsimile 501-371-2618  
Insurance.License@mail.state.ar.us**

To notify consumers of how to file a complaint with the Department, include the following information:

**Consumer Services Division  
Arkansas Insurance Department  
Room 120, First Floor  
1200 West Third**

**Little Rock, AR 72201-1904**  
**Phone 501-371-2640 or 1-800-852-5494**  
**Facsimile 501-371-2618**

File on-line complaints with Internet Access at the Department web page or at  
**Insurance.Consumers@mail.state.ar.us**

**CAVEATS**: The Bulletin does not attempt to answer all questions, which may arise as activities are expanded in this arena. The Arkansas Insurance Department will address other questions on an individual basis.

These guidelines are interim only; are not intended to, and do not create a class of licensees whose status must be "grandfathered" into any statutory scheme which may be adopted by the Arkansas Legislature. Neither the existence of nor compliance with the interim guidelines confers any property or other rights on licensed entities other than the right to conduct the business of insurance in accordance with these interim guidelines until they are superseded or terminated.

This Bulletin addresses primarily insurance agent, agency and producer licensing and transactions, and is not designed to address issues of bank ownership of insurance company subsidiaries or affiliates, bank underwriting of permissible insurance products, and other provisions of the Federal Act. Those may be addressed in a later Bulletin should the Department receive sufficient industry or consumer calls on such topics and as the need arises.

(signed by Commissioner Pickens)  
Mike Pickens  
Insurance Commissioner  
State of Arkansas

**ENCLOSURES:**      **APPENDIX #1 - ARKANSAS LIST OF "SAFE HARBOR" PROVISIONS**  
                          **APPENDIX #2 - REVISED AGENCY APPLICATION FORM 1-56**

## APPENDIX #1

### ARKANSAS EQUIVALENTS TO FEDERAL ACT 13 "SAFE HARBOR" PROVISIONS

- 1) §23-66-312(a)(1)(3), §23-66-315 (a)(3)  
Prohibition of Tying - A Bank may be prohibited from rejecting an insurance policy issued by a person not affiliated with the bank when that insurance policy is required in connection with a loan or extension of credit.
- 2) §23-66-309 & 312(a)(2), §23-101-104(b) +, §23-101-105(c) +  
Prohibition of a Second Charge - A Bank may be prohibited from requiring a "handling fee" or other charge, other than a licensed broker fee, for insurance required in connection with a loan or extension of credit but purchased from unaffiliated agents.
- 3) §23-66-606 (1)(A) \*  
Misleading Advertising - A Bank may be prohibited from utilizing advertisements, which would mislead a consumer into believing that the bank's insurance sales are guaranteed by either the Federal government or State government.
- 4) §23-64-201(d) & 222(b), §23-101-112(a)(2), (c)(2) +  
Payment to Unlicensed Agents - A Bank may be prohibited from paying an unlicensed person for services as an agent or broker.
- 5) §23-64-201(d) & 222(b)  
Referral Fees - A Bank may be prohibited from paying an unlicensed person for referring a customer to a licensed agent or broker, or may be prohibited from paying a referral fee to non-licensed agents based on whether the referral results in an insurance policy sale.  
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- 6) §23-66-315(a) (Real Estate Loans only), §23-66-607 \*  
Confidential Insurance Information - A Bank may be prohibited from & releasing a customer's confidential insurance information to any entity not permitted by Federal or State law unless the customer expressly consents in writing.
- 7) §23-66-607 \*  
Health Information - A Bank may be prohibited from using a customer's health information without the customer's express written consent unless the bank is utilizing that information in its capacity as an insurance agent.
- 8) §23-66-312(a)(1), (3), §23-66-315(a)  
Bundling of Insurance & Non-Insurance Products - A Bank may be prohibited from "tying" or "bundling" of insurance & non-insurance products, except if permitted by the Bank Holding Company Act. (**NOTE: *This provision may be preempted by GLB.***)
- 9) §23-66-312, §23-66-606(1)(B) \*  
Disclosure of Free Choice of Insurer - The Bank may be required to provide a consumer with a written disclosure that the determination of his credit worthiness will not be influenced by his choice of insurer.

- 10) §23-66-606(1)(A) \*  
Disclosure that Insurance is not a Deposit - The Bank may be required to disclose in writing, prior to any sale of insurance, that an insurance policy is not a deposit; is not guaranteed by the Bank or any State or Federal Guarantor, i.e., not guaranteed by the FDIC or FSLIC; and with certain products may involve investment risk, including potential loss of principal (may go down in value).
- 11) §23-66-605(a)(2) \*, §23-101-105(c), (d) +  
Separate Documentation - A Bank may be required to provide separate documentation when a customer obtains credit and insurance in the same transaction.
- 12) §23-66-605(a)(3) \*, §23-101-105(c), (d)  
"Hidden" Insurance Premiums - A Bank may be prohibited from including the expense of insurance premiums in the primary credit transaction without the express written consent of the customer.
- 13) §23-66-605(a)(2) \*  
Separate Records - A Bank may be required to maintain separate and distinct books and records relating to insurance transactions and require that such books and records be made available to State regulators.

\* = Excludes Credit Life, Credit Disability, Credit Property/Unemployment/Casualty, Mortgagor's Decreasing Term Life, Mortgagor's A & H, and Private Mortgage Insurance, et seq.

+ = Creditor-Placed Insurance only, excluding commercial or business transactions, insurance on Collateralized Real Property, Insurance Elected by the Debtor, Blanket Insurance, et seq.

^^ = Although the Arkansas Insurance Code does not have the equivalent statute, the GLB Act provides:

Any compensation paid to or received by any individual who is not licensed to sell insurance, for the referral of a customer who seeks to purchase, or seeks an opinion or advice on, any insurance product, to a person that sells or provides opinions or advice to the consumer on such product, shall be no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction (policy sale).

Arkansas Insurance Department  
1200 West Third Street  
Little Rock AR 72201  
Phone 501-371-2750

### APPLICATION FOR CORPORATION/PARTNERSHIP/LIMITED LIABILITY COMPANY LICENSE

To the Insurance Commissioner of the State of Arkansas: The undersigned hereby applies for a license as specified below and submits the following information:

Type of License Applied For: Domestic \_\_\_\_\_ Foreign \_\_\_\_\_  
Partnership \_\_\_\_\_ Corporation \_\_\_\_\_ Limited Liability Company \_\_\_\_\_  
1. For the following kind of Insurance: ( ) Property, Casualty, ( ) Life, ( ) Variable Annuity, ( ) Credit  
( ) Motor Club ( ) Funeral Expense ( ) Prepaid Legal, ( ) Other \_\_\_\_\_.

2. Federal Tax Identification Number: \_\_\_\_\_

3. Name of Agency: \_\_\_\_\_

Physical Address: \_\_\_\_\_  
Street City State Zip

Mailing Address: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ Fax Number ( ) \_\_\_\_\_

E-Mail Address \_\_\_\_\_

4. Name and addresses of Officers:

President : \_\_\_\_\_ Address \_\_\_\_\_

V. President \_\_\_\_\_ Address \_\_\_\_\_

Secretary \_\_\_\_\_ Address \_\_\_\_\_

5. Name and address of Directors or Partners:

Name \_\_\_\_\_ Address \_\_\_\_\_

Name \_\_\_\_\_ Address \_\_\_\_\_

Name \_\_\_\_\_ Address \_\_\_\_\_

Name \_\_\_\_\_ Address \_\_\_\_\_

**6. Name and address of Stockholders:**

Name \_\_\_\_\_ Address \_\_\_\_\_

Name \_\_\_\_\_ Address \_\_\_\_\_

Name \_\_\_\_\_ Address \_\_\_\_\_

**7. Name, address and social security number of individuals to be involved in the sale or solicitation of business for the Agency:**

Name \_\_\_\_\_ SS# \_\_\_\_\_ Address \_\_\_\_\_

Name \_\_\_\_\_ SS# \_\_\_\_\_ Address \_\_\_\_\_

Name \_\_\_\_\_ SS# \_\_\_\_\_ Address \_\_\_\_\_

**8. Is this corporation/ partnership/limited liability company a lending institution, subsidiary or affiliate of a lending institution or under common control with a lending institution? ( ) Yes ( ) No. If yes, please check one - a lending or bank institution ( ) subsidiary ( ) affiliate ( ) financial/bank holding company ( ).**

**If yes, is the corporation/partnership/limited liability company located in a town with a population over 5,000? Yes ( ) No ( ).**

*Please attach a copy of any letter or certification from the United States Comptroller of the Currency, the Federal Reserve Board or State Banking Department acknowledging the status of the corporation or LLC if you are seeking a license as a bank, or subsidiary, affiliate of a bank, bank holding company, or a financial holding company under federal law.*

**I, \_\_\_\_\_ hereby state under oath or affirmation that all the information in the application is true and correct to the best of my knowledge and belief.**

\_\_\_\_\_ **Signature of Officer**

\_\_\_\_\_ **Office held**

\_\_\_\_\_ **Date Signed**

**Subscribed and sworn to or affirmed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.**

**Signature of Notary Public \_\_\_\_\_**

**My commission expires \_\_\_\_\_**