

211 CMR: DIVISION OF INSURANCE

211 CMR 142.00: INSURANCE SALES BY BANKS, CREDIT UNIONS AND LENDERS

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142.01: Scope and Purpose

211 CMR 142.00 is promulgated pursuant to St. 1998, c. 129: *An Act Providing Consumer Protection Relative to the Sale of Insurance by Banks*, St. 2002, c. 454: *An Act Relative to Credit Unions* and St. 2008, c. 423: *An Act Relative to the Operation of Credit Unions*. The purpose of 211 CMR 142.00 is to regulate the insurance sales activities of banks, credit unions and lenders in Massachusetts and to ensure that such business is conducted in compliance with the consumer protection laws of the Commonwealth.

142.02: Applicability

211 CMR 142.00 applies to any Bank which engages in insurance sales activities in Massachusetts. 211 CMR 142.00 shall not apply to the authority granted by M.G.L. c. 167F, § 2 paragraphs 16 and 17, M.G.L. 171, § 75, seventh paragraph and ninth paragraph, and M.G.L. c. 255, § 12G.

142.03: Definitions

The following terms shall have the corresponding meanings unless the context requires otherwise:

Affiliate. An affiliate of a Bank as defined by M.G.L. c. 167A, § 1, or a credit union service organization as established pursuant to 12 U.S.C. § 1786a(e)(1) or by M.G.L. c. 171, § 6A.

Application. An application by a Bank to transact insurance sales activities submitted to the Division of Insurance under M.G.L. c. 175, § 209.

Bank. A State Bank or State-chartered Credit Union, Lender, Federal Bank or Federal Credit Union which is subject to M.G.L. c. 175, § 209.

Bank Premises. A main office or branch office(s) of a Bank established under state or federal law or any other Bank office, including a loan production office, in which consumer deposit or credit transactions may be effected. Bank Premises also shall include the offices of Lenders. Electronic branches established under M.G.L. c. 167B are not defined as Bank premises and are not authorized locations for insurance sales activities.

Commissioner. The Commissioner of Insurance, including the Division of Insurance of the

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Department of Banking and Insurance established under M.G.L. c. 26, § 1.

Commissioner of Banks. The Commissioner of Banks, including the Division of Banks of the Department of Banking and Insurance established under M.G.L. c. 26, § 1.

Division. Division of Insurance of the Department of Banking and Insurance established under M.G.L. c. 26, § 1.

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Division of Banks. The Division of Banks of the Department of Banking and Insurance established under M.G.L. c. 26, § 1.

Federal Bank. A bank chartered by the United States subject to supervision and examination by the Office of the Comptroller of the Currency, or the Office of Thrift Supervision, or any such successor Federal Bank Regulatory Agency. Federal Bank also shall include an affiliate, subsidiary corporation or third party vendor engaged in insurance sales activities on behalf of, or under contract with, a Federal Bank.

Federal Bank Regulatory Agency. The Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, or any other applicable Federal Bank regulatory agency.

Federal Conditions Governing the Sale of Insurance. The conditions established by the Comptroller of the Currency, the National Credit Union Administration and other applicable federal regulatory agencies, by guideline or subsequent regulation, governing the sale of insurance products. Federal Conditions Governing the Sale of Insurance shall also include conditions prescribed by the Federal Bank Regulatory Agencies' Interagency Statement on Retail Sales of Mutual Funds and other Non-deposit Investment Products, to the extent applicable.

Federal Credit Union. A credit union organized under the provisions of the Federal Credit Union Act and subject to supervision and examination by the National Credit Union Administration or any successor federal regulatory agency. Federal Credit Union also shall include an affiliate or third party vendor engaged in insurance sales activities on behalf of, or under contract with, a Federal Credit Union.

Insurance Sales Activities. Negotiating, soliciting or selling insurance products in Massachusetts, as those terms are defined in M.G.L. c. 175, § 162H.

Interagency Agreement. The Interagency Agreement Relative to Bank Insurance Sales Consumer Complaint Resolution Procedures entered into by the Commissioner and the Commissioner of Banks pursuant to M.G.L. c. 175, § 210; M.G.L. c. 167F, § 2A(b)(9); St. 1998, c. 129, § 11; M.G.L. c. 171, § 75B(b)(9); and St. 2002, c. 454, § 6.

Lender. A small loan company licensed pursuant to M.G.L. c. 140, § 96; a mortgage lender and a mortgage broker licensed pursuant to M.G.L. c. 255E; and a mortgagee subject to the provisions of M.G.L. c. 183, § 68. Lender also shall include an affiliate, subsidiary corporation or third party vendor engaged in insurance sales activities on behalf of, or under contract with, a Lender.

Office of Consumer Affairs. The Office of Consumer Affairs and Business Regulation established under M.G.L. c. 24A, § 1.

St. 1998, c. 129. Chapter 129 of the Acts of 1998.

St. 2002, c. 454. Chapter 454 of the Acts of 2002.

St. 2008, c. 423. Chapter 423 of the Acts of 2008.

State Bank. A state-chartered savings bank, co-operative bank, or trust company or any other bank charter form hereinafter established under the General Laws. State Bank shall include a

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Massachusetts branch of an out-of-state bank, as defined by M.G.L. c. 167, § 1, provided, however, that the laws of such bank's chartering State authorize a bank to engage in insurance sales activities. State Bank also shall include an affiliate, subsidiary corporation or third party vendor engaged in insurance sales activities on behalf of, or under contract with, a State Bank.

State-chartered Credit Union. A corporation as defined in M.G.L. c. 171, § 1. State-chartered Credit Union also shall include an affiliate or third party vendor engaged in insurance sales activities on behalf of, or under contract with, a State-chartered Credit Union.

142.04: Application and Licensing

(1) No Bank may engage in insurance sales activities in Massachusetts unless licensed by the Division pursuant to M.G.L. c. 175, § 209, and 211 CMR 142.00. A State Bank or Federal Bank may apply to be licensed directly or indirectly through an affiliate or a subsidiary corporation established for this purpose. A State-chartered Credit Union or a Federal Credit Union may apply to be licensed directly or indirectly through an affiliate established for this purpose. If a Bank applies to be licensed directly or indirectly through an affiliate, it shall only engage in insurance sales activities through individual licensed insurance producers employed by the Bank or such affiliate. If a State Bank or Federal Bank applies to have a subsidiary corporation licensed as an insurance producer, then such subsidiary corporation shall be licensed in accordance with M.G.L. c. 175, § 174. Licensed individual insurance producers employed by such subsidiary corporation or affiliate may engage in insurance sales activities on Bank premises in accordance with St. 1998, c. 129, St. 2002, c. 454 and St. 2008, c. 423 and regulations promulgated thereunder. Prior to entering into a third-party agreement relative to the sale of insurance that includes the sharing of commissions with an insurance producer, any such Bank must first be licensed by the Division pursuant to M.G.L. c. 175, § 209.

(2) State Banks and State-chartered Credit Unions shall submit with the application a copy of the plan of operation for insurance sales activities for the State Bank or State-chartered Credit Union approved by the Division of Banks pursuant to 209 CMR 49.00: *Insurance Sales by Banks and Credit Unions*.

(3) Federal Banks and Federal Credit Unions shall submit with the application a statement that the Federal Bank or Federal Credit Union has complied with all federal conditions governing the sale of insurance. In addition to the statement, each Federal Bank or Federal Credit Union applying for a license under M.G.L. c. 175, § 209 shall submit with its application a plan of operation for insurance sales activities for the Federal Bank or Federal Credit Union which shall include the following:

(a) A detailed description of the Federal Bank's or Federal Credit Union's consumer complaint resolution procedures, which shall include, but not be limited to: the names, addresses and telephone numbers of designated personnel responsible for its enforcement; a description of its procedures for forwarding copies of all consumer insurance sales complaints to the Office of Consumer Affairs and a description of its procedures for the investigation and resolution of such complaints;

(b) Information demonstrating that the Federal Bank or Federal Credit Union has established effective internal control procedures and safeguards to ensure compliance with the consumer protection terms and conditions prescribed by 211 CMR 142.05 and 142.09;

(c) Detailed information demonstrating that the Federal Bank or Federal Credit Union has established effective internal control procedures and safeguards against the unauthorized release, dissemination, or sharing of confidential customer information, including medical record information, protected by M.G.L. c. 175I, M.G.L. c. 93H, M.G.L. c. 93I, and 201 CMR 17.00: *Standards for the Protection of Personal Information of Residents of the Commonwealth* within the Federal Bank's or Federal Credit Union's organization, including its affiliates, subsidiary corporations and third party vendors, as well as to third parties; and

(d) A representation and undertaking that insurance sales activities of the Federal Bank or Federal Credit Union will be conducted in accordance with 211 CMR 142.00, and all other applicable state and federal laws and regulations.

(4) A fee shall accompany each application for a license issued under M.G.L. c. 175, § 209. The fee for a Bank to be licensed directly, or through an affiliate or a subsidiary corporation, shall be the same fee required by the corresponding application for a business entity insurance producer license issued under M.G.L. c. 175, § 162L, pursuant to M.G.L. c. 175, § 14.

(5) For State Banks, Federal Banks or Federal Credit Unions located wholly outside of

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Massachusetts, nothing in 211 CMR 142.00, shall be construed to prohibit a State Bank chartered in another state of the United States, a Federal Bank, a Federal Credit Union or any employees of such banks or credit unions, from applying for non-resident insurance producer licenses if such banks or credit unions are authorized to engage in insurance sales activities under applicable law; nor shall such State Banks, Federal Banks or Federal Credit Unions, if so licensed, be prohibited from owning an interest in an insurance agency or brokerage located in Massachusetts if such banks or credit unions are authorized to engage in insurance sales activities under applicable law.

142.05: Consumer Protection; Terms and Conditions Governing the Sale of Insurance by Banks

(1) A Bank shall be permitted to conduct insurance sales activities at the main office or at any branch thereof.

(2) A Bank must, to the extent practicable, keep the area where the Bank conducts insurance sales activities physically segregated from areas where retail deposits are routinely accepted from the general public. A Bank must identify the areas where insurance sales activities occur, and clearly delineate and distinguish those areas from the areas where the Bank's retail deposit-taking activities occur.

(a) A State Bank, State-chartered Credit Union or Lender may obtain a waiver for the requirement of physical separation of transactions involving insured deposits or extensions of credit and insurance sales activities from the Commissioner of Banks pursuant to 209 CMR 49.06(4): *Insurance Sales on Bank Premises*. If a State Bank or Lender obtains such a waiver from the Division of Banks, it shall promptly forward a copy of the order approving the waiver to the Division.

(b) With respect to a Federal Bank or Federal Credit Union, the Commissioner, in his or her discretion, may waive the requirement under 211 CMR 142.05(2) for the physical separation of transactions involving insured deposits or extensions of credit and insurance sales activities upon a demonstration by a Federal Bank or Federal Credit Union that space considerations, such as the size or design of said bank premises, preclude such separation. The burden is upon the applicant Federal Bank or Federal Credit Union to demonstrate that size, design, landmark status, National Register of Historic Places designation, site impediments, local zoning requirements, building codes, fire codes or other relevant considerations warrant the granting of a waiver.

1. The following conditions shall apply to any waiver granted under 211 CMR 142.05(2)(b):

a. Common areas may be permitted for banking and credit transactions and insurance purposes if physical constraints warranting such condition are satisfactorily demonstrated by a Federal Bank's or Federal Credit Union's waiver application.

b. In any instance where such waiver is granted, a Federal Bank or Federal Credit Union employee, licensed as an insurance producer, shall not, in any manner involving the application by a customer for an extension of credit by said bank or credit union, act as the representative of the Federal Bank or Federal Credit Union both with respect to said application and with respect to the solicitation and sale of insurance products to said customer, whether or not such insurance is required for the extension of credit.

c. It shall be the responsibility of a Federal Bank or Federal Credit Union to institute procedures to eliminate customer misunderstanding or confusion as to the distinction between such insurance products and other bank functions, and to prevent any misrepresentation thereof if a waiver is granted.

d. The Commissioner, in his or her discretion, may impose such other conditions as may be deemed necessary to effectuate the purposes of 211 CMR 142.05(2).

e. The Commissioner, in his or her discretion, may subject a waiver application under 211 CMR 142.05(2)(b) to such notice and hearing as may be required.

2. Notwithstanding 211 CMR 142.05(2)(b), any Federal Bank premises constructed, purchased, leased or acquired by a Federal Bank on or after September 1, 1998, or on or after June 20, 2003 for a Federal Credit Union subject to M.G.L. c. 171, § 75B, for the conduct of its authorized business, including the solicitation and sale of insurance, shall not be eligible for the waiver provided for herein, unless said acquisition results from a merger, consolidation or purchase of assets pursuant to federal law.

3. Applications for waivers shall be available for public inspection from the Division upon request unless the information is exempt from disclosure under M.G.L. c. 66, § 10, and M.G.L. c. 4, § 7, cl. 26. Decisions approving or denying such applications shall be in writing and shall be available for public inspection from the Division upon request.

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(3) Insurance sales activities conducted at the main office or at any branch location of a Bank shall be conducted only by insurance producers licensed pursuant to M.G.L. c. 175, § 162I. Unlicensed personnel who accept deposits from the public in an area where such transactions are routinely conducted in the Bank may refer a customer who seeks to purchase an insurance product to a licensed insurance producer of the Bank only if the person making the referral receives 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. Unlicensed Bank personnel shall not discuss specific insurance policy terms and conditions.

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- (4) A Bank is prohibited from tying the availability and extension of credit by a Bank to the purchase of insurance products from said Bank in violation of M.G.L. c. 176D, § 4, or 12 U.S.C. §§ 1971 through 1978 and its implementing regulations promulgated by the Board of Governors of the Federal Reserve System.
- (5) A Bank may not engage in any practice or use any advertisement at any office of, or on behalf of, the Bank that could mislead any consumer or otherwise cause a reasonable person to reach an erroneous belief with respect to:
- (a) The fact that an insurance product sold or offered for sale by the Bank is not backed by the Federal government or the Bank, or the fact that the insurance product is not insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration or any other type of deposit insurance, are not an obligation of or guaranteed by the Bank, and may be subject to risk;
 - (b) In the case of an insurance product that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or
 - (c) The fact that the approval of an extension of credit to a customer by the Bank may not be conditioned on the purchase of an insurance product by the customer from the Bank; and the customer is free to purchase the insurance product from another source.
- (6) A Bank, through its licensed insurance producers, shall disclose in writing to a potential insurance customer that:
- (a) the insurance products which are available are not deposits of the Bank, are not protected by the Federal Deposit Insurance Corporation, the National Credit Union Administration or any other type of deposit insurance, are not an obligation of or guaranteed by the Bank, and may be subject to risk;
 - (b) any insurance required as a condition of the extension of credit by the Bank need not be purchased from the Bank but may, without affecting the approval of the application for an extension of credit, be purchased from an insurance producer or insurance company of the customer's choice; and
 - (c) the customer may file any complaints with the Office of Consumer Affairs, as provided in 211 CMR 142.09(4).
- (7) (a) In the instance of an application to a Bank for an extension of credit in connection with which an insurance product is solicited, offered, or sold, the Bank must make the disclosures required under 211 CMR 142.05(6) orally and in writing at the time the consumer applies for an extension of credit.
- (b) If an application for credit is taken by mail, the Bank is not required to make the oral disclosure required by 211 CMR 142.05(7)(a).
 - (c) If an application for credit is taken by telephone, the Bank may provide the written disclosure required by 211 CMR 142.05(7)(a) by mail, provided it is mailed to the customer within three days beginning the first business day after the application is taken, excluding Sundays and the legal public holidays specified under federal and state laws.
 - (d) Subject to the requirements of § 101(c) of the *Electronic Signatures in Global and National Commerce Act* (12 U.S.C. 7001(c)) and the *Uniform Electronic Transactions Act*, M.G.L. c. 110G, the Bank may provide the written disclosures required by 211 CMR 142.05(7)(c) through electronic media instead of on paper, if the customer affirmatively consents to receiving the disclosures electronically and if the disclosures are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as downloading). Any disclosure required by 211 CMR 142.05(7)(a) that is provided by electronic media is not required to be provided orally.

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(8) 211 CMR 142.05(7) shall not apply in situations where a Bank contacts a consumer in the course of direct or mass marketing of insurance products to a group of persons in a manner that bears no relation to any such person's loan application or credit decision.

(9) Rebates shall be regulated pursuant to M.G.L. c. 175, §§ 182 through 184 and M.G.L. c. 176D, § 3(8).

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(10) The disclosure required by 211 CMR 142.05(6)(a) shall not apply to a Lender that does not accept deposits.

(11) The disclosures required by 211 CMR 142.05 shall be provided in writing and receipt thereof shall be acknowledged in writing by the customer. A copy of all disclosure forms shall be kept in the records of the Bank.

(142.06: Additional Provisions: Reserved)

142.07: Anti-discrimination

No Bank engaged in insurance sales activities shall unlawfully discriminate against an insurance applicant or allow an affiliate, a subsidiary corporation established for the purpose or a third party acting on its behalf to unlawfully discriminate against an applicant for any insurance products offered by it based upon his or her membership in any class protected by M.G.L. c. 151B, §§ 4(3A) and (3B), including but not limited to, race, color, national origin or residence. No Bank offering insurance products at its premises shall refuse to offer the same at every such branch of the Bank.

142.08: Customer Information and Record Keeping

(1) A Bank licensed as an insurance producer under M.G.L. c. 175, § 209 shall not permit the unauthorized release, dissemination, or sharing of confidential information, including medical record information, protected by M.G.L. c. 175I, M.G.L. c. 93H, M.G.L. c. 93I, and 201 CMR 17.00: *Standards for the Protection of Personal Information of Residents of the Commonwealth* within the Bank's organization, including its affiliates, subsidiary corporations and third party vendors, as well as to third parties.

(2) A Bank shall at all times remain in compliance with M.G.L. c. 175I, M.G.L. c. 93H, M.G.L. c. 93I, and 201 CMR 17.00: *Standards for the Protection of Personal Information of Residents of the Commonwealth*.

142.09: Consumer Complaint Processing

(1) A Bank engaged in insurance sales activities, as an insurance producer, shall forthwith forward copies of all Massachusetts consumer complaints relative to such activities to the Office of Consumer Affairs. Said Office shall cause a record of all such complaints received to be maintained and shall, depending upon the nature of the complaint, refer any such complaint for resolution to the Division or the Division of Banks.

(2) The processing and resolution of consumer complaints under 211 CMR 142.09 shall be governed by the Interagency Agreement, and any amendments thereto.

(3) A Bank shall take reasonable steps to investigate all consumer complaints and shall make a good faith effort to resolve such consumer complaints in a timely manner.

(4) Nothing in 211 CMR 142.09(1) shall prohibit a consumer from filing a separate individual complaint directly with the Office of Consumer Affairs, the Division or the Division of Banks. Such complaints shall be processed pursuant to the Interagency Agreement.

142.10: Fines and License Suspension or Revocation

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Any violation of 211 CMR 142.00 shall be subject to all applicable fines and penalties, including the suspension and revocation of licenses, pursuant to the provisions of M.G.L. c. 175, and c. 176D. Any violation of 211 CMR 142.00 shall be deemed to be an unfair method of competition and an unfair or deceptive act or practice pursuant to M.G.L. c. 176D.

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142.11: Severability

If any provision of 211 CMR 142.00 or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of 211 CMR 142.00 and the application of such provision to other persons or circumstances shall not be affected thereby.

REGULATORY AUTHORITY

211 CMR 142.00: M.G.L. chs. 175 and 176D; St. 1998, c. 129, St. 2002, c. 454 and St. 2008, c. 423.