

Legal Affairs



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The OTS legal team plays a central role in accomplishing the agency's mission and serving the OTS-regulated thrift industry. The team drafts legal opinions, operates the enforcement program, drafts regulations to implement federal laws, helps to draft proposed legislation, litigates court cases, oversees attorneys in OTS regional offices who provide legal advice to examiners and thrifts, and offers legal guidance on applications for new thrift charters and for new activities under existing charters.

In fiscal 2008, the number of formal and informal actions against thrifts and thrift holding companies significantly increased due to the current economic crisis. For example, the number of cease-and-desist orders doubled from the previous year to 31 in FY 2008. These orders — and the eight supervisory agreements issued by OTS in FY 2008 — focused on inadequate capital levels, high levels of classified assets, poor earnings and limited liquidity. In FY 2008, the OTS also assessed civil money penalties totaling more than \$1 million against eight other institutions. In comparison, the OTS assessed civil money penalties totaling about \$13,000 against two institutions in FY 2007.

During fiscal 2008, Congress enacted landmark housing and financial services legislation in the “Housing and Economic Recovery Act” and the “Emergency Economic Stabilization

Act.” The OTS played a significant role in shaping these legislative proposals, especially in the area of foreclosure mitigation. The OTS legal team performed the key task of analyzing proposed provisions that shaped the final bills.

The team also continued its heavy involvement in fiscal 2008 in preventing abuses and ensuring the integrity of the process of mutual thrifts converting to stockholder-owned institutions. Mutuals are typically small, community-focused institutions that concentrate on the financial needs of their local areas without stockholders urging higher returns. Although the OTS strongly supports mutual thrifts, converting to stock form allows institutions to raise capital to operate their businesses and billions of dollars have flowed into the thrift industry through such conversions.

During FY 2008, the OTS issued legal opinions affirming the authority of federal thrifts to accept public deposits, even when state law prohibits such activity, and to offer certain discount programs to customers.

The OTS legal team also completed several regulatory projects of significance for the industry during the year, including final rules on:

- Fair Credit Reporting Affiliate Marketing,

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- Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act;
 - Risk-Based Capital Standards: Advanced Capital Adequacy Framework - Basel II;
 - Optional Charter Provisions in Mutual Holding Company Structures;
 - Permissible Activities of Savings and Loan Holding Companies; and
 - Personal Transactions in Securities.
- In addition, the OTS issued the following proposed and interim rules:
- Unfair or Deceptive Acts or Practices;
 - Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Standardized Framework;
 - Minimum Capital Ratios; Capital Adequacy Guidelines; Capital Maintenance; Capital: Deduction of Goodwill Net of Associated Deferred Tax Liability; and
 - Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies Under Section 312 of the Fair and Accurate Credit Transactions Act ■

