



January 21, 2005

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552
Sent via e-mail

Attention: No. 2004-54

Re: RIN 1550-AB93: Application and Reporting Requirements

To Whom It May Concern:

The American Financial Services Association ("AFSA")¹ submits this comment letter in response to the interim final rule issued by the Office of Thrift Supervision ("OTS") based on its review of regulations under Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (the "Interim Final Rule"). 69 Fed. Reg. 68,239 (Nov. 24, 2004). The Interim Final Rule makes changes to various savings association application and reporting requirements intended to reduce regulatory burden on Federal savings associations. *See id.* Among these changes, the OTS has added "approving" loans and contracts to the list of activities that a Federal savings association may conduct in an agency office without OTS approval, and has requested comment on whether there are other activities that may be added to the list of pre-approved agency office activities without impacting safety and soundness. We appreciate the opportunity to provide comments on this issue.

As discussed in greater detail below, we recommend that the OTS clarify the scope of the currently listed activities of "[s]ervicing, originating or approving loans;" and add the sale of money orders and check cashing to the list of activities that may be conducted in an agency office without prior OTS approval. We believe that these

¹ AFSA is the trade association for a wide variety of providers of financial services to consumers and small businesses. Currently, AFSA member companies hold over \$125 billion of consumer installment debt, accounting for between 15-20% of outstanding in the United States. AFSA's automobile finance entities hold \$56 billion of automobile credit on their books, accounting for about one-fifth of all auto loans. Further they account for a significant portion of the \$33 billion of loans that have been pooled into securities assets. AFSA members are active participants in the mortgage markets. They accounted for over \$10 billion of home equity lines of credit and \$40 billion of traditional home equity loans. Finally, AFSA members are important participants in the credit card market, accounting for over 25% of receivables.

additional activities do not inherently raise safety and soundness concerns, and that adding these activities, along with clarifying the scope of the listed lending activities, would reduce regulatory burden by reducing the instances in which an individual savings association would need to obtain OTS clarification or approval.

Background

Under 12 C.F.R. § 545.96(a), a Federal savings association is authorized to establish or maintain an agency office without the prior approval of the OTS, if the office engages only in certain specified activities. 12 C.F.R § 545.96(a). Activities not included in the list in subsection (a) of the regulation may be conducted at an agency office with OTS prior approval, with the exception of “payments on savings accounts.” *Id.* at § 545.96(b). Prior to adoption of the Interim Final Rule, the activities listed in subsection (a) included “servicing or originating (but not approving) loans and contracts . . .” 12 C.F.R § 545.96(a). Noting that most requests to offer additional services at agency offices have involved approval of loans and contracts, and that these requests have not presented supervisory concerns, the OTS determined in the Interim Final Rule that it could eliminate the prior approval requirement for loan approval activities without impacting safety and soundness. 69 Fed. Reg. at 68,241. Thus, the Interim Final Rule includes in the list of pre-approved agency office activities “[s]ervicing, originating, or approving loans or contracts.” *Id.* at 68,249. The OTS requested comment on whether other activities could be added to the list of pre-approved agency office activities without impacting safety and soundness.

Servicing, Originating or Approving Loans

It would be useful to savings associations if the OTS clarified the scope of “[s]ervicing, originating, or approving loans.” It appears that the purpose of expanding the pre-approved agency activities in the Interim Final Rule to include loan approvals is to allow savings associations to conduct in an agency office all of the activities necessary to extend credit that might otherwise be conducted at a home office. Certainly, adding loan approvals to servicing and origination is helpful in this regard. However, even with the change to Section 545.96 made by the OTS in the Interim Final Rule, Section 545.96(a) still remains unnecessarily ambiguous regarding agency office lending activities. To address this, we respectfully request that the OTS add the parenthetical phrase “(including all lending activities that may be conducted in a home office)” after the word “loans” in Section 545.96(a)(1) to eliminate the remaining ambiguity regarding pre-approved agency office lending activities. This change would obviate the need for savings associations to request OTS clarification or prior approval on a case-by-case basis regarding activities that appear to be impliedly covered by the regulation.

Several OTS interpretive letters have discussed the terms “origination” and “servicing” in the context of lending. For example, it appears from various OTS letters that origination would include accepting loan applications, and also may include collecting

underwriting documentation and conducting loan closings. See, e.g., OTS Op. Chief Counsel (Dec. 19, 1994), at 7 n.22 (accepting loan application); FHLBB Op. Gen. Counsel (Aug. 7, 1984) (accepting loan application, collecting and forwarding loan underwriting documentation for decision by the savings association, loan closing). The OTS has indicated that “servicing” of loans would include post-loan approval activities, such as work-in-progress inspection of property and loan disbursements. OTS Op. Gen. Counsel (Oct. 12, 1971). See also OTS, Thrift Activities Regulatory Handbook Update (Jan. 14, 2000), at 4 (acquisition area of consumer loan department originates loans, which includes handling applications, gathering and reviewing credit information, and deciding to approve or reject the loan; servicing area, among other things, disburses loan proceeds). However, the terms “origination” and “servicing” do not have a uniform meaning in the interpretative letters or in the banking industry generally, and are not defined in OTS regulations.

There are a number of different steps that may be viewed as part of originating, approving and servicing loans. These include, for example, marketing a loan (*e.g.*, via brochures and signs), receiving a loan application, processing the application, obtaining additional information from the consumer or other sources, verifying information, underwriting and approving a loan, closing on the loan, disbursing the loan proceeds and post-closing servicing (*e.g.*, customer service and collections). While including a laundry list of activities in the agency office regulation might be helpful, it could result in inadvertently excluding an activity. However, because there is no question that savings associations may conduct all aspects of the lending process at their home office, a reference to lending activities conducted at a home office would capture the full scope of activities. To the extent the OTS can provide greater certainty in this regard, the regulatory burden on savings associations seeking to use agency offices for lending will be diminished.

Additional Activities

We also respectfully request the addition of the sale of money orders and check cashing to the list of pre-approved activities for an agency office under 12 C.F.R. § 545.96(a). These services have been provided routinely by financial institutions, including savings associations, for decades, and there is no indication that these activities have raised safety and soundness concerns. OTS Op. Chief Counsel (Nov. 22, 1999), OTS P-99-9, at n.44 (cashing third-party checks and selling money orders given as examples of banking functions routinely performed by financial institutions for non-clients for a fee). Moreover, as savings associations work hard to bring historically unbanked populations into the mainstream of banking, services such as money orders and check cashing are proving to be an important first step toward earning the trust of these potential customers. The flexibility to conduct these activities in agency offices on a pre-approved basis would allow savings associations to respond rapidly to customer needs and, as a result, increase the likelihood of savings associations developing the customer loyalty necessary to bring historically unbanked persons into the banking system. Also, from a powers perspective, savings associations have clear long-standing authority to conduct the sale of money orders and check cashing.

Federal savings associations have long been authorized to issue money orders. See OTS, Powers of Federal Savings Associations (Mar. 1, 2002), at 16, citing 12 C.F.R. § 545.17; FHLBB Op. Gen. Counsel (Nov. 24, 1965). In particular, the OTS has stated that the language of 12 C.F.R. § 545.17 expressly authorizes federal savings associations to issue money orders. See OTS Op. Chief Counsel (Dec. 14, 1994), at 3 n.4; OTS Op. Chief Counsel (Mar. 25, 1994), at 2. In addition, savings associations and national banks have long been permitted to sell money orders through nonbanking outlets. See 12 C.F.R. § 7.1014 (previously codified at 12 C.F.R. § 7.7500); OTS Op. Chief Counsel (Dec. 14, 1994). Also, the authority of Federal savings associations to cash checks can be traced back at least as far as 1968 and was recently confirmed in a 2004 OTS order. See FHLBB Op. Gen. Counsel (June 24, 1968); OTS Order 2004-39 (July 30, 2004).

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Once again, we appreciate the opportunity to comment on the Interim Final Rule. If you have any questions concerning the comments contained in this letter, or if we may otherwise be of assistance in connection with this issue, please do not hesitate to call me at the number indicated above.

Sincerely,

A handwritten signature in black ink that reads "Robert E. McKew". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Robert E. McKew
Senior Vice President and General Counsel
American Financial Services Association