



Office of Thrift Supervision
Department of the Treasury

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MEMORANDUM FOR: Chief Executive Officers

FROM: John F. Downey
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SUBJECT: Federal Savings Association Authorities

Attached is a listing and summary of recent Office of Thrift Supervision (OTS) Chief Counsel opinions about the authority of thrifts to engage in various activities and make certain investments. Because the opinions were based on representations made in specific inquiries, institutions interested in engaging in similar activities should review the actual text of the opinions, rather than relying on the summaries. Any material differences in facts could result in different legal conclusions.

We are issuing this summary because the opinions, which expand or clarify the ability of thrifts to engage in certain activities, are frequently requested and may be helpful for planning purposes. We hope to issue similar summaries periodically.

The listing is in chronological order of the opinions. Following each summary conclusion is the opinion's date, number of pages, and OTS's assigned "PubliFax" document number.

The full text of each opinion is available for receipt by fax via the OTS PubliFax Line, (202) 906-5660; or by request (with reference to the PubliFax document number) to the OTS Public Reference Room, either by mail at the above address or by telephone on (202) 906-5900.

For further information on the opinions, contact Vicki Hawkins-Jones (202) 906-7034.

Attachment



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**Interpretive Opinions
(January 1994 – August 1995)**

Authority to Act as Residential Mortgage Document Custodians

Summary Conclusion: Federal savings associations may, without the need to obtain OTS trust powers approval, act as residential mortgage document custodians for third parties.

January 31, 1994; 4 pages; 90002.

Authority to Provide Postal Services

Summary Conclusion: Federal savings associations may provide the same postal services that the Office of the Comptroller of the Currency authorizes for national banks, subject to various restrictions noted in the opinion.

March 25, 1994; 14 pages; 90003.

Authority to Establish and Operate Mobile Banking Facilities or Mobile ATMs

Summary Conclusion: Federal savings associations may own and operate full-service mobile banking facilities as branch offices, subject to statutes and regulations applicable to fixed branch offices. Federal thrifts may also own and operate mobile ATM facilities or participate with other financial institutions in mobile ATM operations on an unlimited geographic basis without prior notice or application to the OTS. These activities are subject to compliance with OTS remote service units and branch security procedures regulations.

May 16, 1994; 9 pages; 90004.

Interpretation of Federal Savings Association Trust Powers Concerning Location, Branching and Preemption Issues

Summary Conclusion: An affiliate registered broker-dealer of a federal savings association may serve as a nationwide marketing agent for the association's trust services. For purposes of Section 5 (n) of the Home Owners' Loan Act (HOLA):

- o the association would be "located" only in the state where it has its home office;
- o the association's fiduciary powers would be determined by reference to the powers of state-chartered fiduciaries located in the association's home state; and
- o the broker-dealer's offices would not be deemed to be branch offices.

Also, the HOLA would generally preempt any of the various state laws that purportedly might require state licenses or prohibit the association from serving as trustee for customers located in the state.

June 13, 1994; 11 pages; 90005.

Authority to Establish Overseas (Foreign) Agency Offices

Summary Conclusion: Federal savings associations may establish foreign agency offices to perform clearinghouse functions that will facilitate trust services for United States-based institutional trust customers. The OTS requires the filing of an application to establish a foreign agency office; OTS staff must be satisfied that the agency offices will not endanger an association's safety and soundness.

June 13, 1994; 9 pages; 90006.

Authority to Establish Foreign Operating Subsidiaries

Summary Conclusion: Federal savings associations may, subject to a number of conditions, establish and maintain foreign operating subsidiaries to manage a portion of their securities investment portfolios, and to hold legal title to securities physically located in the United States. The OTS requires the filing of an application to establish a foreign operating subsidiary; OTS staff must be satisfied that the agency offices will not endanger an association's safety and soundness.

July 6, 1994; 8 pages; 90007.

Preemption of State Law Affecting Lending by Operating Subsidiaries

Summary Conclusion: State mortgage and consumer lending laws that the OTS has determined do not apply to federal savings associations, by reason of federal preemption, do not apply to federal savings associations' state-chartered operating subsidiaries, also by reason of federal preemption.

October 17, 1994; 6 pages; 90008.

Authority to Directly Sell Credit Life and Disability Insurance and Fixed-Rate Annuities

Summary Conclusion: Federal savings associations may engage directly in the sale of credit life and disability insurance and fixed-rate annuities on an agency basis, solely upon order and for the account of customers. Federal savings associations that engage in these activities will be subject to applicable state insurance laws and certain supplemental OTS policies and conditions.

October 17, 1994; 14 pages; 90009.

Preemption of a State Law that Regulates Money Order Services of Federal Savings Associations

~~**Summary Conclusion:** Federal law preempts a state law that would have required federal savings associations either to obtain a license or a certificate, or to operate only through subsidiaries or other affiliates, before conducting money order activities in the state.~~

December 14, 1994; 3 pages; 90011.

Authority to Install Advanced-Type Automatic Teller Machines — Status as Remote Service Units or Branches

Summary Conclusion: Federal savings associations may establish advanced-type Automatic Teller Machines (ATMs). These advanced-type ATMs are subject to OTS's remote service unit regulation, but are not subject to OTS's branch office regulatory provisions and restrictions. The advanced-type services to be performed include conducting transactions through two-way video-phone devices; printing out signature cards, documents to open savings accounts, and loan application forms; and

using "day depository" drawers for holding deposits and completed applications for a courier service's pick-up for overnight transport to and processing at an association branch office.

December 19, 1994; 8 pages; 90012.

Interaffiliate Banking Arrangements Authority

Summary Conclusion: Affiliated federal savings associations controlled by the same holding company may provide certain banking services (i.e., deposits, withdrawals, check cashing, and loan payments) to each other's customers without filing branch office applications. When doing so, the associations must take various safety and soundness precautions and ensure the integrity of assets and records. [See summary conclusion of "Commercial Bank/Federal Savings Association Interaffiliate Customer Service Arrangements" opinion, dated August 28, 1995, included in this listing.]

December 30, 1994; 8 pages; 90013.

Authority to Underwrite or Reinsure Credit Insurance Through an Operating Subsidiary

Summary Conclusion: Operating subsidiaries of federal savings associations may underwrite or reinsure credit insurance, but only in connection with loans that the association or its subsidiaries make. Operating subsidiaries must comply with any applicable state insurance laws and certain supplemental OTS policies and conditions.

January 10, 1995; 10 pages; 90014.

Authority to Make Foreign Real Estate Loans, and to Provide Management and Consulting Services to Foreign Lenders

Summary Conclusion: Federal savings associations may make loans on the security of foreign residential real estate, subject to the appropriate OTS regional office's satisfaction that the association can do so safely and soundly. (The types of safety and soundness issues that an association should address in its submission to its regional office are set forth in an attachment to the Chief Counsel's opinion.) Also, federal savings associations may provide certain management and consulting services to foreign lenders.

May 10, 1995; 12 pages; 90015.

Authority to Make Community Development Investments

Summary Conclusion: Federal savings associations may make equity investments in community development projects under § 5(c)(3)(B) of the HOLA, without complying with certain obsolete requirements in the section, provided the investments meet six standards that the OTS Chief Counsel described in the opinion. Associations that wish to make investments that do not meet these standards, but that are consistent with the spirit and intent of § 5(c)(3)(B), may continue to seek case-by-case OTS Chief Counsel no-action review.

May 10, 1995; 6 pages; 90016.

Preemption of State Mortgage Lending Practices Laws

Summary Conclusion: Federal savings associations are subject to a state law requiring lenders to collect a nominal mortgage loan tax from borrowers and remit it to the state. Federal savings associations, however, need not comply with state laws that impose requirements regarding licensing,

registration, advertising, disclosure, escrow accounts, financial reports, maintenance of books and records, and registration and filing fees.

May 10, 1995; 5 pages; 90017.

Authority to Offer Foreign Currency Exchange Services

Summary Conclusion: Federal savings associations may offer foreign currency exchange services, and only to the extent necessary to facilitate such services, invest in and hold foreign currency. These activities must be consistent with safety and soundness. (Federal savings associations may not speculate in foreign currency.)

August 11, 1995; 8 pages; 90018.

Commercial Bank/Federal Savings Association Interaffiliate Customer Service Arrangement Authorities

Summary Conclusion: On specific facts presented, two savings associations controlled by a bank holding company were authorized to (1) provide basic banking services (i.e., deposits, withdrawals, check cashing and loan payments) to customers of affiliated commercial banks; and (2) obtain such services from the affiliated banks for their customers. OTS branching or other type approval for the interaffiliate customer service arrangements in this case was not needed. The associations were required to comply with certain safety and soundness requirements (set forth in the December 30, 1994 Chief Counsel's opinion included in this listing). (The OTS requires case-by-case staff review before bank/thrift interaffiliate customer service arrangements are established.)

August 28, 1995; 8 pages; 90019.