

Date: December 7, 1999.

Summary Conclusion: Federal law preempts a San Francisco, California municipal ordinance that purports to prohibit a financial institution from charging a fee to a customer for accessing an automated teller machine of that financial institution with an access device not issued by that financial institution. The opinion relies on the principles and reasoning set out in a November 22, 1999 Chief Counsel's opinion.

Subject: Home Owners' Loan Act/Savings Association Powers.



Office of Thrift Supervision
Department of the Treasury

Chief Counsel

1700 G Street, N.W., Washington, DC 20552 • (202) 906-6251

December 7, 1999

[

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Re: San Francisco ATM Fee Ordinance

Dear []:

This responds to your inquiry on behalf of [] (“Association”), regarding a San Francisco municipal ordinance (“San Francisco Ordinance”)¹ that purports to prohibit a financial institution from charging a fee to a customer for accessing an automated teller machine (“ATM”) of that financial institution with an access device not issued by that financial institution. You ask whether federal law preempts the San Francisco Ordinance for federal savings associations.

As your inquiry notes, the Office of Thrift Supervision (“OTS”) recently concluded that federal law preempts a Santa Monica, California municipal ordinance that is nearly identical to the San Francisco Ordinance.² The differences in the two ordinances are inconsequential. For instance, the San Francisco Ordinance uses the term “customer” whereas the Santa Monica ordinance uses the term “user,” and the San Francisco Ordinance uses the term “surcharge” whereas the Santa Monica ordinance uses the term “fee.” The operative terms of the two ordinances are the same: a financial institution is prohibited from charging a fee to anyone who accesses that institution’s ATMs with an access device not issued by that financial institution. Under the San Francisco Ordinance, an “access device” is “a card, code, or other means of access to a customer’s account, or any combination thereof, that may be used by the customer to an initiate [sic] electronic fund transfer.”

¹ Proposition F, approved by referendum November 2, 1999, implementation currently enjoined. Orders of November 15 and 24, 1999, Bank of America v. City and County of San Francisco, No. C-99-4817 (N.D. Cal. 1999).

² OTS Op. Chief Counsel (November 22, 1999) (copy attached).

Given that the two ordinances are essentially identical in language and operation, the principles and reasoning set out in the November 22, 1999 OTS Chief Counsel's opinion are equally applicable to the San Francisco Ordinance. For the reasons set out in that opinion, we agree with your conclusion that federal law preempts application of the San Francisco Ordinance to federal savings associations.

We trust this is responsive to your inquiry. Please feel free to contact Timothy P. Leary, Counsel (Banking & Finance), at (202) 906-7170 or Vicki Hawkins-Jones, Assistant Chief Counsel, at (202) 906-7034 if you have any further questions.

Very truly yours,

/s/

Carolyn J. Buck
Chief Counsel

cc. All Regional Directors
All Regional Counsel