

Preemption of Iowa Laws Regulating Loan Fees

Summary Conclusion: Federal law preempts the application of loan-related fee restrictions in Iowa laws to federal savings associations.

Date: December 14, 2001

Subjects: Home Owners' Loan Act/Savings Association Powers

P-2001-11



Office of Thrift Supervision

Department of the Treasury

Chief Counsel

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

December 14, 2001

[]
[]
[]
[]

Re: Preemption of Iowa Laws Regulating Loan Fees

Dear []:

This responds to your recent letter on behalf of [] (“Association”), a federal savings association. In your letter, you request that the Office of Thrift Supervision (“OTS”) issue a legal opinion on whether federal law preempts the application to the Association of certain Iowa laws that regulate loan fees. You indicate that the Association is a defendant in a lawsuit filed in the [] alleging that the Association has violated the state law provisions. The Association has filed a [] and a Motion to Dismiss in the United States District Court []. You have provided copies of various pleadings in this matter and we have reviewed them.

The provisions at issue are Iowa Code § 535.8.2.a., which restricts, and § 537.2501, which specifies, loan fees “lenders” may charge.¹ Iowa Code § 535.8.2.a. restricts the “loan processing fee” on loans to purchase one or two family owner-occupied dwellings to two percent of loan principal. For refinances or assumptions with the same lender, the section limits the loan processing fee to a “reasonable estimate” of expenses for processing, but not to exceed one percent of the amount assumed or refinanced. The section also allows a lender to charge a “commitment fee,” a “closing fee,” or both. The statute does not define the terms “loan processing fee,” “commitment fee,” or “closing fee.”

Iowa Code § 537.2501 specifies permissible fees in consumer credit sales, consumer loans, refinancings and consolidations of consumer loans, consumer leases, and consumer rental purchase agreements. This section of the statute specifically allows a

¹ The Iowa Code does not define the term “lender” for purposes of section 535.8. It does, however, define a “lender” for purposes of section 537.2501 to include “a ‘person’ who makes a loan.” Iowa Code § 537.1301(23). A “person” means a natural person, partnership, individual, or organization. Iowa Code § 537.1301(32).

lender to charge certain types of fees in addition to finance charges, for example: (1) official fees and taxes; (2) certain charges for insurance; (3) amounts paid by the lender for registration, certificate of title, or license fees; (4) *bona fide* and reasonable amounts for specified closing costs for loans secured by land (e.g., title examination and deed preparation fees); and (5) certain charges for dishonored payment instruments.

The plaintiffs' Petition alleges that the Association has violated these provisions by: (1) charging loan fees in excess of the amount set in Iowa Code § 535.8.2.a. for home purchase loans; and (2) charging loan fees limited or prohibited by Iowa Code § 537.2501 for consumer loans.²

Federal law preempts application of the loan fee restrictions in Iowa Code § 535.8.2.a. to federal savings associations. To the extent that the provisions of § 537.2501 are construed, applied, or interpreted to restrict any loan-related fees federal savings associations may charge, they are preempted as well. OTS regulations promulgated under the Home Owners' Loan Act, 12 U.S.C. § 1461 *et seq.*, specifically provide that the types of state laws preempted for federal savings associations "include, without limitation, state laws purporting to impose requirements regarding . . . (5) [l]oan-related fees, including without limitation, initial charges, late charges, prepayment penalties, servicing fees, and overlimit fees[.]" 12 C.F.R. § 560.2(b)(5) (2001) (emphasis added). Moreover, OTS has opined repeatedly that state restrictions on various types of loan-related fees are preempted for federal savings associations. See, e.g., OTS Ops. Chief Counsel, April 21, 2000 (payoff statement fees), March 10, 1999 (demand statement and facsimile fees), and December 24, 1996 (appraisal fees and credit insurance premiums).

We trust this is responsive to your inquiry. If you have further questions, please contact Richard Bennett, Counsel (Banking and Finance), at (202) 906-7409.

Very truly yours,



Carolyn J. Buck
Chief Counsel

cc: Regional Directors
Regional Counsel

² The Petition also alleges breaches of contract. Those causes of action are beyond the scope of this letter.