

**Abstracts of Significant Legal Opinions
Office of Thrift Supervision
January 1994 - December 1996**

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, Branch 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):

the association would be "located" only in the state where it has its home office; 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 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.

Jun 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**.

Preemptions 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, 1995; 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 conclusions 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; 5 pages; **90016.**

Preemption of State Mortgage Lending Practices Laws

Summary Conclusion: Federal savings associations are subject to a state law requiring lenders to collection 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.**

Applicability of Section 23A of the FRA to Purchases of Mortgages Originated by an Affiliate

Summary Conclusion: An association's purchases of all of its mortgage banking affiliate's loan production do not qualify for the exemption under 12 C.F.R. §250.250 from the restrictions on transactions with affiliates imposed by §23A of the FRA. The affiliate had no active lines of credit or other established funding sources for its loan production activities, other than the association. The §250.250 exemption is not available if the purpose of a loan purchase is to alleviate the working capital needs of an affiliate. September 8, 1995; 5 pages; **90022**.

Authority to Invest in Stock Corporations Operating EFT Systems

Summary Conclusion: Federal savings associations have incidental authority to acquire stock of a for-profit corporation that operates an EFT system used by insured depository institutions. OTS uses five criteria for testing whether an investment in a for-profit stock corporation represents a genuine, non-speculative investment. September 15, 1995; 5 pages; **90023**.

Applicability of Section 23A of the FRA to the Origination and Purchase of Loans of an Affiliate

Summary Conclusion: On specific facts presented, an association's past and proposed purchases of mortgage loans from an affiliated developer are not exempt under 12 C.F.R. §250.250 from the transactions with affiliates restrictions of §23A of the FRA. Past loan purchases authorized under a Federal Home Loan Bank Board approval will not be considered violations of §23A. The association's direct loans to purchasers of the developer's homes are attributed to the developer under §23A(a)(2) of the FRA. October 4, 1995; 5 pages; **90024**.

Authority to Provide Ministerial Support Services as Agent for a Trust Company

Summary Conclusion: A savings association has incidental authority to act as agent for an unaffiliated trust company to provide ministerial, non-discretionary support services without obtaining prior OTS trust powers approval. The support services (receiving documents from and transmitting documents to the trustee and its customers, storing documents, and executing or obtaining execution of documents), are a form of correspondent services. Performance of the services would not require the association to exercise discretion or to make substantive decisions regarding the trusts. October 17, 1995; 5 pages; **90025**.

Alternative Mortgage Transaction Parity Act

Summary Conclusion: The Alternative Mortgage Transaction Parity Act applies to "housing creditors" that engage in alternative mortgage transactions, including persons who "regularly make" loans secured by residential real estate. Natural persons and real estate brokers may be considered "housing creditors," provided they make more than five such loans within specified time periods.

October 20, 1995; 6 pages; **90026.**

Authority of a Federal Savings Association with Trust Powers to Contract with an Affiliate for Investment Management and Advisory Services

Summary Conclusion: A federal savings association with trust powers may contract with an affiliated registered investment advisor to provide investment management and advisory services to the association's trust department, subject to certain conditions. The advisor may not have discretionary authority to buy or sell assets managed by the association's trust department. Trust powers granted under the HOLA include incidental authority to contract for assistance in the exercise of such powers, if consistent with fiduciary responsibilities and safety and soundness.

November 22, 1995; 7 pages; **90027.**

Debt Cancellation Contracts

Summary Conclusion: A federal savings association may include debt cancellation as a provision in its consumer installment loan contracts without utilizing an operating subsidiary so long as the association retains no risk related to debt cancellation upon any sale of the loans. An association that includes debt cancellation clauses in loans it originates must cover the risk by either obtaining insurance or establishing reasonable actuarial reserves (or a combination of each).

December 18, 1995; 4 pages; **90028.**

Investment in an EFT Network

Summary Conclusion: A federal savings association may participate in a joint venture limited partnership that owns an EFT system where partnership shares are owned by institutions that use the EFT system and by a data processing company that operates the EFT system. OTS uses five criteria for evaluating the predominant purpose of investments in such "joint-user corporations." Where ownership of the EFT system includes non-users, there must be sufficient safeguards in the joint venture structure to give priority to the needs of users.

December 22, 1995; 3 pages; **90029.**

Preemption of Colorado Annual Reporting Requirements

Summary Conclusion: A Colorado statute requiring all financial institutions that accept deposits in Colorado to file detailed annual financial reports with the state is an impermissible attempt to monitor and examine federal savings associations and is preempted by the Home Owners' Loan Act.
January 18, 1996; 3 pages; **90030**.

Usury Preemption/Loans Secured by Timeshare Interests

Summary Conclusion: A loan originated for the sole purpose of financing the purchase of a timeshare that conveys an interest in real property under state law will be considered a purchase money residential real estate loan covered by the usury preemption provisions of §501 of the Depository Institutions Deregulation and Monetary Control Act of 1980, even though the timeshare may include related incidental amenities such as furnishings, club memberships, amusement park passes, and exchange rights.
January 26, 1996; 3 pages; **90031**.

Authority to Sell Credit-related Insurance

Summary Conclusion: Federal savings associations may sell, on an agency basis, credit-related unemployment and single interest property insurance in connection with consumer loans, provided they comply with OTS conditions and applicable laws.
February 12, 1996; 3 pages; **90032**.

Neighborhood Housing Services of America ("NHTSA") Securities

Summary Conclusion: NHTSA securities backed by residential loans may be purchased by federal savings associations free from the percentage-of-assets limitations contained in §5(c) of the Home Owners' Loan Act, but subject to certain loans-to-one-borrower limits.
March 28, 1996; 15 pages; **90033**.

Authority to Conduct Interstate Trust Business

Summary Conclusion: With prior approval from OTS, a savings association may exercise trust powers through agency offices located in any state that authorizes state banks or other companies to act as fiduciaries, including states where the association does not have its main office or a branch, to the same extent as the trust powers authorized by that state for in-state fiduciaries.
March 28, 1996; 9 pages; **90034**.

Effect of Parity Act on Wisconsin Prepayment Penalty Statute

Summary Conclusion: Variable-rate loans made by Wisconsin-chartered savings and loan associations in conformity with the Alternative Mortgage Transaction Parity Act are not subject to a Wisconsin statute restricting prepayment penalties on variable-rate loans. April 30, 1996; 5 pages; **90035**.

Authority to Originate Reverse Mortgage Loans with an Equity Share Feature

Summary Conclusion: Federal savings associations and certain housing creditors may originate Fannie Mae's Home Keeper Mortgage, a reverse mortgage loan with an equity share feature, for prompt sale to Fannie Mae. May 3, 1996; 11 pages; **90036**.

Interstate Marketing of Trust Services

Summary Conclusion: A federal savings association will not be "located" in states where it merely markets its trust services in a specified manner. State laws that purport to prohibit or restrict an out-of-state federal savings association from advertising or marketing its trust services in the state are preempted. June 21, 1996; 9 pages; **90037**.

Reinsurance and Marketing of Private Mortgage Insurance

Summary Conclusion: 12 C.F.R. § 563.44 prohibits a savings association from insuring loans with a private mortgage insurer that reinsures its risks with the association's service corporation. A savings association may offer borrowers the option of paying a higher interest rate and having the thrift pay the private mortgage insurance premium directly, without affecting the loan-to-value calculation. July 12, 1996; 6 pages; **90038**.

Interstate Trust Activities

Summary Conclusion: On specific facts presented, a federal savings association will not be "located," for trust purposes, in a state where it only markets its trust services and performs certain specified incidental activities pursuant to its appointment as a testamentary trustee or trustee holding real estate. Federal law preempts state laws that prohibit or restrict an out-of-state federal savings association from engaging in the foregoing activities in the state. August 8, 1996; 16 pages; **90039**.

Authority of Federal Savings Associations to Market and Sell Prepaid Telephone Cards

Summary Conclusion: Federal savings associations may market and sell prepaid telephone cards on an agency basis. This activity meets the four part test employed by OTS to identify activities that fall within the incidental powers of federal savings associations. August 29, 1996; 7 pages; **90040**.

Commercial Community Development Investments

Summary Conclusion: HOLA Section 5(c)(3)(B) permits investments in commercial community development projects provided that the standards of location, public benefit, safety and soundness, loans to one borrower limits, and certain other conditions are met. The investment is subject to all other applicable provision of law, including investment limits, capital requirements, and OTS regulations. November 22, 1996; 8 pages; **90041**

Fixed Rate Mortgage Loans with a Default Rate

Summary Conclusion: A fixed rate mortgage loan secured by an interest in residential real property, the loan documents for which explicitly provide for an increase in the interest rate upon default by the borrower, is an "alternative mortgage transaction" under the federal Alternative Mortgage Transaction Parity Act provided the loan conforms to applicable OTS regulations. The default rate loan permits "adjustment of the interest rate and the default rate constitutes a "variation" that is "not common to traditional fixed-rate, fixed term transactions" within the meaning of the Parity Act. November 27, 1996; 10 pages; **90042**

Preemption of State Laws Applicable to Credit Card Transaction

Summary Conclusion: Federal law does not preempt an Indiana law prohibiting fraudulent and deceptive loan practices. Federal law preempts specified Indiana laws pertaining to disclosure requirements and loan-related charges (except charges that constitute interest under the most favored lender provision). December 24, 1996; 11 pages; **90043**