Office of Thrift Supervision
Department of the Treasury

1700 G Street, N.W., Washington, D.C. 20552 • (202) 906-6000

December 28, 1994

[redacted]

RE: Signature Requirement for Consumer Loan Applications

Dear [redacted]

This responds to your letter, submitted on behalf of [redacted] (the "Savings Bank"), requesting confirmation that the Office of Thrift Supervision (the "OTS") will not take enforcement action against the Savings Bank under 12 C.F.R. § 563.170(c)(2) if the Savings Bank originates consumer loans in the manner described below without obtaining signed loan applications.

Based on the information submitted, we have decided to grant the Savings Bank's no-action request, provided its consumer loans are generated in accordance with the procedures described below.

I. Background

The Savings Bank originates approximately 55,000 consumer loans annually, 95% of which are the result of telephone marketing. Consumer loans constitute approximately 20% of the Savings Bank's total loan originations. Virtually all of the Savings Bank's consumer loans are secured, usually by automobiles. The average principal amount of the Savings Bank's consumer loans is $12,000.

The Savings Bank proposes to take consumer loan applications over the telephone, rather than requiring applicants to manually complete and execute loan applications. Under the procedures proposed by the Savings Bank, its employees will enter the information obtained from each applicant into a computer system, and electronically generate a loan application. After taking all the pertinent information from an applicant, the Savings Bank's employee will read back the information to the applicant to confirm its accuracy, request the applicant's verbal authorization to submit the application to the Savings Bank, and place a note in the Savings Bank's computer records indicating that the information has been confirmed and that authorizaton to submit the application has been received. The Savings Bank will use the electronic loan application, along with other documentation (including a credit report), to evaluate and underwrite the loan.

If the loan application is approved, the Savings Bank will forward a promissory note and a security agreement to the borrower for execution and redelivery to the Savings Bank. However, at no point will the Savings Bank obtain a manually executed loan application.

II. Discussion

The OTS's loan documentation regulation provides that savings associations making consumer loans must, inter alia, obtain loan applications signed by borrowers or their agents.[1] This requirement serves two purposes. First, borrowers are likely to use greater care when preparing a document that they must sign. The signature requirement, therefore, promotes accuracy on loan applications. Second, if an institution concludes that a borrower has provided false information on a loan application, a signed application provides definitive evidence of the borrower's representations that could be used in the event of litigation.

Notwithstanding the foregoing, the Savings Bank argues that the signature requirement for consumer loan applications is outmoded, inefficient, and unnecessarily constrains credit availability for the following reasons:

1. In the modern economy, many types of financial transactions that formerly required customers' signatures are being performed on the basis of verbal authorizations by customers. For example, customers can engage in credit card transactions over the telephone without manually executing credit card drafts. In addition, certain types of banking services, such as transfers of funds, can be performed upon verbal authorizations from customers. More and more, savings associations and other depository institutions are being called upon to offer consumers the convenience of verbal, rather than written, authorization procedures.

2. National banks, certain state banks, and other types of creditors (including credit unions, finance companies, and dealer financers) are not subject to the requirement that they obtain signed applications for consumer loans. This enables the competitors of savings associations to provide credit to customers more quickly and with less paperwork.

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1. 12 C.F.R. § 563.170(c)(1)(i) and (c)(2).

3. Requiring a signed copy of each loan application results in significant administrative expenses, including additional staff time to process and keep track of paper applications and the cost of mailing, handling, and storing paper applications. You represent that the Savings Bank processes approximately 92,000 consumer loan applications per year and that the Savings Bank estimates that elimination of the signature requirement would save the Savings Bank $100,000 or more per year.

4. The benefits derived from manually executed consumer loan applications are relatively small when compared to the costs. With respect to the primary policy objective behind the signature requirement (enhancing accuracy), you argue that accuracy can be ensured by other means, such as orally reviewing and confirming information given by applicants over the telephone. With respect to the other policy objective behind the signature requirement (providing definitive proof of borrower representations in the event of litigation), you argue that institutions rarely bring suit against customers for false representations -- due to the cost of litigation, the odds against actual recovery of damages from a marginal borrower, and the relatively low amount of principal due on most consumer loans.

As you have pointed out, Section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 ("CDRIA"),[2] requires each federal banking agency to conduct a comprehensive review of its regulations over the next two years in order to "streamline and modify those regulations . . . to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability . . . [and to] remove . . . outmoded . . . requirements. . . ." We have reviewed your arguments regarding the consumer loan application signature requirement with OTS supervisory staff, and they have concluded that, as part of the regulatory streamlining mandated by CDRIA § 303(a), the OTS should amend its loan documentation regulation to allow consumer loan applications to be taken by telephonic or electronic means without requiring a signature. Until this amendment is made, the OTS will not take enforcement action against the Savings Bank or other savings associations for failure to obtain consumer loan application signatures, provided the replacement procedures proposed by the Savings Bank and described in Part I of this letter are followed.

In reaching this conclusion, we have relied on the representations contained in your submissions, as summarized herein. Our conclusion is based on the accuracy and completeness of your representations. Any material change in circumstances from those described herein could result in a different conclusion.

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2. Pub. L. No. 103-325, 108 Stat. 2160 (1994).

It is also important to note that our conclusion pertains only to enforcement actions for failure to obtain signed consumer loan applications taken by telephonic or electronic means. The Savings Bank is responsible for ensuring that all consumer loans it originates are prudent and safe and that such loans conform to all other applicable laws and regulations. This letter does not preclude enforcement action for failure to satisfy these standards.

If you have any further questions regarding this matter, you may contact Evelyne Bonhomme, Counsel (Banking and Finance), at (202) 906-7052.

Very truly yours,

Dwight C. Smith for

Carolyn B. Lieberman
Chief Counsel

cc: All Regional Directors
All Regional Counsel