

Press Releases

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OTS 03-22 - OTS Says New Jersey Law Does Not Apply To Federal Thrifts

Office of Thrift Supervision

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For further information

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OTS SAYS NEW JERSEY LAW DOES NOT APPLY TO FEDERAL THRIFTS

WASHINGTON - The Office of Thrift Supervision (OTS) announced today that federal law preempts provisions of the recently enacted New Jersey Home Ownership Security Act of 2002 from applying to federal savings associations and their operating subsidiaries. Federal preemption of the New Jersey law is based on the Home Owners' Loan Act and OTS regulations that comprehensively and exclusively regulate lending by federal savings associations.

"Federal law authorizes OTS to provide federal savings associations with a uniform national regulatory environment for their lending operations," said OTS Director James E. Gilleran. "This enables and encourages federal thrifts to provide low-cost credit safely and soundly on a nationwide basis. By requiring federal thrifts to treat customers in New Jersey differently, the New Jersey law would impose increased costs and an undue regulatory burden."

In a response letter to an inquiry, OTS Chief Counsel Carolyn Buck said OTS concluded that provisions of the New Jersey statute "purporting to regulate the terms of credit, loan-related fees, disclosures, mortgage processing, origination, refinancing, servicing, and disbursements are preempted by federal law from applying to federal savings associations."

OTS also concluded that federal law prevents a multi-faceted compliance scheme contained in the New Jersey law from applying to federal savings associations with respect to the preempted provisions of the statute.

In preempting the New Jersey law, OTS Chief Counsel Buck noted that in enacting the Home Owners' Loan Act, Congress required the agency to "provide for the organization, incorporation, examination, operation, and regulation of thrift institutions, giving primary consideration of the best practices of thrift institutions in the United States." Consistent with this congressional objective, OTS has implemented a uniform federal scheme of regulation that "occupies the field of regulation for the lending activities of federal savings associations." This enables federal thrifts to lend nationwide, subject only to the requirements of federal law, "including restrictions on abusive practices such as those in the Home Ownership Equity Protection Act and its implementing regulations."

The United States Supreme Court and other courts have long recognized OTS's ability to provide a federal regulatory scheme that governs all aspects of the lending operations of federal savings associations and preempts state laws in that area. Earlier this year, OTS found that federal law preempted similar New York and Georgia statutes on the same grounds.

Pursuant to its usual practice of consulting the State banking supervisor when considering preemption opinion requests, OTS obtained the views of the New Jersey Department of Banking on the New Jersey law and the State's interest in enacting it. The agencies also discussed ways to enhance their coordination in handling consumer complaints.

The OTS legal opinion is available on the agency's website at: www.ots.treas.gov.

Legal Opinion - <http://www.occ.gov/static/news-issuances/ots/press-releases/ots-pr-2003-21a.pdf>

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The Office of Thrift Supervision (OTS), a bureau of the U.S. Treasury, regulates and supervises the nation's thrift industry. OTS's mission is to ensure the safety and soundness of thrift institutions and to support their role as home mortgage lenders and providers of other community credit and financial services. For copies of news releases or other documents visit the OTS web page at www.ots.treas.gov.