

Date: July 29, 1999.

Summary Conclusion: Federal law preempts Maryland's mortgage lender licensing requirements with respect to an operating subsidiary of a federal savings association just as if the federal savings association were directly engaging in the lending activities in question.

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



Office of Thrift Supervision

Department of the Treasury

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

P-99-8

Chief Counsel

July 29, 1999

[

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Re: Preemption of State Lender Licensing Laws

Dear []:

This responds to your inquiry on behalf of [] (Association), and its wholly-owned mortgage lending operating subsidiary, [] (Operating Subsidiary). You ask us to confirm that operating subsidiaries of federal savings associations are not subject to licensing under Maryland and various state mortgage lending licensing statutes, and that state statutes purporting to regulate the manner and circumstances under which credit can be extended are preempted for operating subsidiaries to the same extent as they are for their parent federal savings associations.¹

Briefly, we conclude that federal law preempts the State of Maryland's mortgage lender licensing requirements with respect to Operating Subsidiary just as if the Association were directly engaging in the lending activities in question. Accordingly, Operating Subsidiary need not comply with those state lender licensing requirements as a prerequisite to conducting mortgage lending operations in Maryland.

¹ Your request references a number of state laws including Maryland, Connecticut, New York, Ohio, and Pennsylvania. As indicated in your letter, however, your "request . . . focus[es] in detail on the licensing statutes enacted by the State of Maryland because its statutes are representative of the statutes in effect in other jurisdictions." Request at 2-3.

I. Background

The Association maintains its principal office in [] and does not have branches in Maryland. Until [] 1997, Operating Subsidiary, a Delaware state-chartered corporation, was an independent mortgage lending company (Mortgage Lender) that conducted mortgage lending operations in Maryland and other states, and held licenses to act as a mortgage lender issued by those states. On [], 1997, the Association acquired Mortgage Lender as a wholly-owned Operating Subsidiary of the Association. Operating Subsidiary continues to conduct mortgage lending operations in Maryland.

You indicate that before the acquisition, Mortgage Lender notified the Maryland Department of Labor, Licensing and Regulation (MD Department) of the pending acquisition by the Association and that Mortgage Lender would no longer be subject to state licensing requirements. After the merger, the Association notified the MD Department that Mortgage Lender had become the Association's wholly-owned subsidiary and that, as an operating subsidiary of a federally chartered savings bank, Operating Subsidiary was no longer subject to state licensing requirements. The MD Department responded that Operating Subsidiary, regardless of its change in status, must comply with the state's licensing requirements to continue to engage in the business of lending in Maryland.²

The provisions of the Maryland Mortgage Lender Law (MD Licensing Law) and certain implementing regulations that you cite generally require that an entity acting as a mortgage lender obtain a separate license for each location at which it does business in Maryland.³ An applicant for a mortgage lender license must submit an application, pay certain fees, post surety bonds for each office at which it seeks to conduct business, and comply with certain other requirements.⁴ The MD Licensing Law exempts from its

² See [] letters from [], Maryland Department of Labor, Licensing and Regulation, to, respectively, [], Compliance Paralegal for Mortgage Lender, and [], [] Counsel for Association, expressing the view that compliance with the state's licensing requirements is not an obstacle to a federal thrift or its operating subsidiary engaging in lending activities under federal law, that federal and state statutes are not in irreconcilable conflict, and that OTS acted beyond its statutory authority in its attempt to preempt state laws pursuant to 12 C.F.R. Part 559 with respect to state-chartered operating subsidiaries of federal thrifts.

³ Md. Code. Ann., Financial Institutions, Title 11. Consumer Credit, Subtitle 5. Maryland Mortgage Lender Law §§ 11-504 and 505 (1998).

⁴ Md. Code Ann. §§ 11-506 to 11-511 (1998).

requirements specified state- and federally chartered financial institutions and certain subsidiaries and affiliates of, among others: (1) any Maryland or federally chartered bank, savings bank, or savings and loan association that maintains its principal office in Maryland; (2) any out-of-state bank having a branch that accepts deposits in Maryland; or (3) any federally chartered savings association or savings bank that has a branch that accepts deposits in Maryland.⁵ The Association does not maintain its principal office in Maryland or operate any branches in Maryland; therefore Operating Subsidiary does not fall within these exemptions.⁶

II. Discussion

We recently addressed the precise questions you raise in a comprehensive opinion issued on July 26, 1999 (July 1999 Opinion).⁷ That opinion concluded that the requirements of the MD Licensing Law about which you inquire do not apply to a federal savings association's wholly-owned mortgage lending operating subsidiary by reason of federal preemption.⁸ As discussed in that opinion, it is well-established that state laws purporting to impose licensing requirements on federal savings associations as a condition of engaging in lending activities are preempted by federal law.⁹ Thus, the MD Licensing Law clearly would not apply to a federal savings association.

As discussed in detail in the July 1999 Opinion, OTS has also consistently indicated that state laws purporting to regulate the activities of a federal savings association's operating subsidiary are preempted by federal law to the same extent such laws are preempted for the federal savings association itself.¹⁰ Accordingly, we concluded in the July 1999 Opinion that because the MD Licensing Law would not apply to a federal savings association, it also did not apply to the association's wholly-owned mortgage lending operating subsidiary.¹¹

⁵ Md. Code Ann. § 11-502(b)(1), (b)(11), and (c) (1998).

⁶ For a more detailed discussion of the MD Licensing Law, see OTS Op. Chief Counsel (July 26, 1999) at 3.

⁷ OTS Op. Chief Counsel (July 26, 1999). A copy of the opinion is enclosed.

⁸ Id.

⁹ Id. at 5-8.

¹⁰ Id. at 8-12.


¹¹ Id. at 12-15.

Our conclusion that the MD Licensing Law is preempted in the particular situation presented in your inquiry is consistent with OTS's exercise of its plenary and exclusive authority to regulate and occupy the field of operations of federal associations and their operating subsidiaries as evidenced in long-standing OTS regulations and as consistently interpreted in OTS opinions.¹²

In reaching the foregoing conclusions, we have relied upon the factual representations contained in the materials you submitted to us, as set forth in the background discussion above. Our conclusions depend upon the accuracy and completeness of those representations. Any material change in facts from those set forth herein could result in different conclusions.

If you have any questions regarding the foregoing, please contact Ellen Sazzman, Counsel (Banking and Finance), at (202) 906-7133 or Vicki Hawkins-Jones, Assistant Chief Counsel, at (202) 906-7034.

Very truly yours,



Carolyn J. Buck
Chief Counsel

Enclosure

cc: Regional Directors
Regional Counsel

¹² As noted in the July 1999 Opinion at 15 n.64, OTS does not view the matter of preemption of state law lightly and generally does not find federal preemption of state contract, commercial, tort, real estate, criminal, and other laws to the extent they only incidentally affect the lending operations of federal savings associations or are otherwise consistent with (or not contrary to) the purposes of OTS's lending regulations. See 12 C.F.R. § 560.2 (1999). Moreover, banking is a highly regulated industry and there are numerous federal laws and regulations that protect consumer-borrower interests with respect to, for example, disclosure, equal credit opportunity, fair lending, and fair credit reporting. See discussion in the July 1999 Opinion at 15 n.64.