Applicability of State Law to Federal Savings Associations

Summary Conclusion: The Home Owners' Loan Act and OTS regulations govern the relationships between a federal savings association and depositors, borrowers, and non-accountholders who use the association's services.

Date: June 26, 2001

Subjects: Home Owners' Loan Act/Savings Association Powers

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Deer [ ]:

Thank you for your letter of June 4, 2001 to Director Seidman regarding the applicability to federal savings associations of Section 4.112 of the Texas Business & Commerce Code, captioned “Payment of Check at Par.” Your letter has been referred to me for response.

The Home Owners' Loan Act, 12 U.S.C. 1461 et seq., (HOLA), and regulations promulgated by the Office of Thrift Supervision (OTS) under the authority of the HOLA, govern the relationships between a federal savings association and depositors, borrowers, and non-accountholders who use the association’s services. In this regard, please see 12 U.S.C. §§ 1463(a)(1) and 1464(a), and 12 C.F.R. §§ 545.2, 557.11–557.13, and 560.2. OTS has not addressed the specific question you ask. In a somewhat analogous context, however, OTS has concluded that a federal savings association is not subject to local ordinances that purport to prohibit a financial institution from charging a fee to non-accountholders for using that institution’s automated teller machine. OTS Op. Chief Counsel (November 22, 1999). A federal court has agreed with this conclusion. See Bank of America v. City and County of San Francisco, No. C-99-4817-VRW (N.D. Cal. June 30, 2000), appeal pending, Nos. 99-17590, 99-17591 (9th Cir.).

I trust this is responsive to your inquiry. If you have any further questions, please feel free to contact me at the number noted above or Timothy P. Leary (Counsel, Banking & Finance) at (202) 906-7170.

Very truly yours,

Carolyn J. Buck
Chief Counsel

cc: Ellen Seidman, Director