



Office of Thrift Supervision
Department of the Treasury

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

December 14, 1994

[REDACTED]

Re: Preemption of Virginia Law Regulating Money
Order Services of Federal Savings Associations

Dear [REDACTED]

This responds to your inquiry submitted on behalf of [REDACTED] (the "Association"), seeking confirmation that the Association is not subject to the Virginia Money Order Sales Act. For the reasons presented below, we conclude that the Money Order Act is preempted.

Background

You represent that the Association currently issues and sells money orders, pursuant to 12 C.F.R. § 545.17, through independent third party agents located in more than 40 states. Most of these agents are small financial institutions or retail stores. Under the Association's standard operating agreement, the agents receive payment for money orders from customers, remit the funds overnight to the Association, and issue money order drafts bearing the Association's name that can be negotiated like cashier's checks. The Association is responsible for making payment on the money orders.¹

1. We note that agency office applications are not required in situations such as this where limited services are offered through independent agents. See e.g., OTS Op. by Williams, April 13, 1993 (use of independent loan correspondents does not require agency office application); and FHLBB Op. by Samuel, November 21, 1983 (use of retailer as independent agent to distribute literature about deposit products does not require agency office or branch application).

The Association proposes to enter into a similar money order agency arrangement with a financial institution or retailer located in Virginia. However, the Virginia Money Order Sales Act (the "Money Order Act") provides that no person may engage in the business of money transmission in the State of Virginia unless such person obtains a money order license from the State Corporation Commission. Va. Code Ann. § 6.1-371. An exception is made for savings institutions "authorized to do business in the Commonwealth." Va. Code Ann. § 6.1-371. However, in order to obtain a certificate of authorization to do business, an institution must go through an application and review process similar to that prescribed by the Money Order Act. Va. Code Ann. § 6.1-194.41.

To obtain a license under the Money Order Act, an applicant must file an application, submit financial statements, pay a \$500 fee, purchase a surety bond, and persuade the state that it is financially sound, trustworthy, and experienced. Va. Code Ann. §§ 6.1-372 and 6.1-374. Thereafter, annual renewal fees of \$250 and annual reports must be filed with Virginia. Va. Code Ann. § 6.1-373. Licenses may be revoked for a variety of reasons, including financial difficulties or refusal to permit Virginia examinations. Va. Code Ann. § 6.1-374.

In addition, you indicate that the staff of the Virginia Bureau of Financial Institutions has advised you that, in their view, the Association may sell money orders in Virginia only through a subsidiary, which would have to obtain a license under the Act. Moreover, if this subsidiary were not incorporated in Virginia, it would have to qualify to do business there as a foreign corporation.

Discussion

On numerous prior occasions, the Office of Thrift Supervision ("OTS") and its predecessor, the Federal Home Loan Bank Board ("FHLBB"), have opined that state laws attempting to impose licensing and registration requirements on federal savings associations are preempted.² The courts

2. E.g., OTS Op. by Williams, April 13, 1993 (state laws imposing licensing requirements on federal thrifts or requiring their business to be done through subsidiaries are preempted); OTS Op. by Williams, November 20, 1992 (state laws requiring federal thrifts to register and pay a fee before engaging in the mortgage banking business are preempted); OTS Op. by Chief Counsel, November 30, 1990 (state statutes, regulations, and policies restricting the lending operations of federal thrifts located in other states and requiring them to establish subsidiaries and obtain state

have reached the same conclusion.³

For the same reasons set forth in the foregoing authorities, we believe that the Money Order Act has no application to federal savings associations. The Association is not required to obtain a license or a certificate of authorization from the Virginia authorities before conducting its money order activities in Virginia. Nor can it be forced to operate only through subsidiaries or other affiliates. States cannot prohibit federal savings associations from engaging in activities authorized by federal law.⁴ The authority to license is the authority to prohibit.

In reaching the foregoing conclusions, we have relied on the factual representations contained in the materials you and submitted to us. Our conclusions depend on the accuracy and completeness of those representations. Any material change in facts from those set forth in your submission could result in different conclusions. It is also important to note that our conclusions pertain only to federal savings associations. Nothing herein should be construed as exempting the independent agents with whom the Association contracts from compliance with applicable Virginia law.

If you have any questions regarding the foregoing, please call Evelyne Bonhomme, Counsel (Banking and Finance), at (202) 906-7052.

Very truly yours,



Karen Solomon
Deputy Chief Counsel

(Footnote 2 continued from previous page)
mortgage bankers licenses are preempted); OTS Op. by Katz, January 9, 1990 (Virgin Islands' law requiring federal thrifts to obtain a license to do business is preempted); and FHLBB Op. by Goldberg, October 29, 1976 (state law requiring foreign corporation registration and disclosure of examination reports by federal thrifts is preempted).

3. E.g., People v. Coast Federal Savings & Loan Association, 98 F. Supp. 311 (S.D. Calif. 1951) (state statutes prohibiting federal thrifts from operating without state authorization are preempted).

4. Federal savings associations are expressly authorized by 12 C.F.R. § 545.17 to engage in money order activities. OTS Op. Chief Counsel, March 25, 1994. State laws that purport to regulate activities authorized in 12 C.F.R. Part 545 are expressly preempted by 12 C.F.R. § 545.2.