

**Abstracts of Significant Legal Opinions
Office of Thrift Supervision
1997**

Alternative Mortgage Transaction Parity Act

Summary Conclusion: Adjustable-rate home equity lines of credit and closed-end, subordinate lien loans that are secured by an interest in residential real property qualify as “alternative mortgage transactions” under the federal Alternative Mortgage Transaction Parity Act. If a state housing creditor complies with the regulations the OTS has identified as applicable to loans made under the Parity Act, the housing creditor need not comply with conflicting or inconsistent state law restrictions.

February 10, 1997; 7 pages

Banking Services Offered via an Internet Connection

Summary Conclusion: A Federal savings bank or its subsidiary, pursuant to OTS’s home banking services regulation and OTS’s data processing regulation, may offer the savings bank’s customers home banking services via a connection to the Internet. Through its website, the savings bank or its subsidiary may also provide general access to the Internet to the savings bank’s customers and, under certain conditions, to others in the savings bank’s service area. Providing general Internet access to its customers and non-customers of the savings bank would be permissible under OTS’s data processing regulation. Providing Internet accounts for non-savings bank customers must be part of a safe and sound implementation strategy acceptable to the appropriate OTS regional office.

April 14, 1997; 7 pages

Adjustments to Home Loans Indexed to LIBOR

Summary Conclusion: An index based on the six-month London Interbank Offered Rate (LIBOR) for U.S. dollar-denominated deposits and published in the *Wall Street Journal* as of a specified date would qualify as a “national” index under OTS’s regulation governing interest rate and other adjustments to home loans. 12 C.F.R. § 560.35(d). A non-federally chartered “housing creditor” other

than a bank or credit union offering ARM loans in reliance on the Alternative Mortgage Transaction Parity Act must comply with OTS regulatory requirements for alternative mortgage transactions, including those pertaining to adjustments to home loans and to disclosures for ARM loans.

June 12, 1997; 4 pages

Investment in Real Estate Brokerage Agency

Summary Conclusion: A mutual holding company may acquire a real estate brokerage firm because that activity is “reasonably related to the activities of financial institutions” and could be engaged in by a service corporation. OTS will review, however, a service corporation’s operation of a real estate brokerage firm on a case-by-case basis, and may impose appropriate conditions.

July 16, 1997; 7 pages

Performance Notes Transaction

Summary Conclusion: A unitary savings and loan holding company may purchase “Performance Notes” from the parent company of a private mortgage insurer, where the interest on the Performance Notes would be based on the performance of mortgage loans originated by the thrift and insured by the insurer, subject to certain limitations.

July 18, 1997; 6 pages

New Jersey Licensed Lenders Act

Summary Conclusion: Provisions of the New Jersey Licensed Lenders Act (the “Act”) would be preempted for federal savings association operating subsidiaries making first and second mortgage loans secured by New Jersey residential real estate to the same extent provisions of the Act would be preempted for a federal savings association engaging in those activities.

August 19, 1997; 6 pages

Preemption of State Law Limiting Discount Points

Summary Conclusion: An Ohio law limiting discount points lenders may receive when making residential mortgage loans is preempted by § 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (“DIDMCA”) for housing creditors making federally related mortgage loans secured by first liens on residential real property. Technical amendments made to the Ohio law in 1988 did not constitute new limitations on discount points under § 501(b)(4) of DIDMCA.

August 25, 1997; 7 pages

Applicability of Virgin Islands Banking Board Order and Virgin Islands Licensing Statute regarding Preemption

Summary Conclusion: Federal law preempts the application of an administrative order of the U.S. Virgin Islands Banking Board that purports to (i) prohibit all banking institutions in the Virgin Islands from charging against escrowed insurance proceeds the cost of inspecting repairs of properties securing mortgage loans, and (ii) require all banks in the Virgin Islands to refund any inspection fees collected since Hurricane Marilyn hit the Virgin Islands. In addition, federal law preempts a Virgin Islands statute requiring that all “banks” (including federal savings associations) in the Virgin Islands obtain annually a special license to do business and to pay a corresponding license fee. Federal law preempts state laws that purport to govern the operations of federal savings associations. In addition, state licensing requirements are preempted for federal savings associations.

September 2, 1997; 12 pages

Establishment of Automatic Loan Machines

Summary Conclusion: Automatic loan machines (“ALMs”) used to process loan and deposit applications, subject to final approval at the institution, qualify as remote service units under OTS’s regulatory definition, and its activities would not exceed the limitations imposed by the definition. The ALMs are fully automated systems that process consumer loans between \$1,000 and \$8,000, generate the underlying loan documentation, and issue conditionally-approved bank checks.

September 19, 1997; 7 pages

Special Purpose Credit Programs

Summary Conclusion: In response to a request for treatment of a proposed small business lending program as a special purpose credit program and authorization to inquire as to the race, nationality, sex, and handicapped status of the principals of its small business loan applicants, OTS indicated that it does not give prior approval or disapproval of proposed special purpose credit programs. OTS did provide guidance on how the inquirer could develop its program in conformity with applicable statutory and regulatory requirements.

October 8, 1997; 5 pages

Authority to Purchase Farmer Mac Common Stock

Summary Conclusion: A federal savings association, pursuant to its incidental powers, may purchase Farmer Mac common stock in nominal amounts necessary to enable it to sell agricultural loans to Farmer Mac and to participate in Farmer Mac's secondary market programs.

October 14, 1997; 5 pages