

Press Releases

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OTS 99-79 - California Thrift Has Right to Charge No clients for ATM Use, OTS Opinion Says

Office of Thrift Supervision

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California Thrift Has Right to Charge Nonclients for ATM Use, OTS Opinion Says

WASHINGTON, D.C., Nov. 24, 1999 - In a legal opinion made public today, the Office of Thrift Supervision (OTS) states that, under federal law, First Federal Bank of California, a \$3.65 billion federal savings association, has the right to charge fees for the use of its automatic teller machines (ATMs) by those who are not its customers.

The OTS opinion was issued in response to a request from First Federal which is based in Santa Monica, Calif. The city on October 12, 1999, adopted an ordinance to prohibit financial institutions from charging fees for use of ATMs located in Santa Monica by individuals who are not depositors or otherwise clients of the institutions. The ordinance further provides that each violation subjects an institution to at least \$250 in damages and up to \$5,000 in punitive damages.

OTS noted that the cost of establishing and maintaining an ATM is substantial. First Federal, which requested the opinion from OTS, put the cost of setting up an ATM at approximately \$50,000 and the annual maintenance cost for an off-site ATM at about \$28,500. First Federal charges nonclients \$1.00 to \$1.50 per transaction to use its ATMs, depending on location.

As grounds for its finding that the Santa Monica ordinance is preempted by federal laws and regulations, the OTS opinion cites the Home Owners Loan Act (HOLA), the agency's own electronic operations regulation and two other recent opinions in which OTS concluded that state law restrictions on ATM operations "were preempted by federal law." OTS's new opinion states that HOLA and OTS's implementing regulations give OTS authority to regulate the deposit-related activities of federal savings associations. OTS long-standing regulations, adopted after notice and comment, state that such authority "is preemptive of any state law purporting to address the subject of the operations of a Federal savings association."

OTS regulations permit federal thrifts to operate ATMs for purposes of conducting deposit-related and loan-related activities and to charge fees for their use. OTS's opinion states that an institution's decision to charge nonclients for using the ATMs "is a business decision

designed to help defray the costs of providing ATM services." Moreover, the opinion states, "OTS has not banned or restricted ATM access fees. To the contrary...to the extent a federal savings association performs deposit-related functions through ATMs, these functions are governed by OTS's regulations on deposits..."

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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' 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.