Office of Thrift Supervision
Department of the Treasury
Chief Counsel
1700 G Street, N.W., Washington, D.C. 20552 • (202) 906-6251

January 18, 1996

[redacted]

RE: Preemption of Colorado Annual Reporting Requirements

Dear [redacted]

This responds to your inquiry regarding whether federal law preempts the application of Section 11-25-107 of the Colorado Revised Statutes[1] to [redacted] and other federal savings associations. As explained more fully below, Section 11-25-107 purports to require all financial institutions accepting deposits in Colorado to file detailed annual reports with the state.

In brief, we conclude that these reporting requirements have no application to federal savings associations by reason of federal preemption.

I. Background

Section 11-25-107 authorizes the Colorado Financial Services Board to promulgate regulations requiring any "financial institution accepting deposits in this state" to file annual reports with the Financial Services Board. The reports are to include: (a) all financial data filed by the institution with its primary regulator; (b) a copy of any public portion of the institution's most recent Community Reinvestment Act examination; and (c) "such [additional] comprehensive information as the . . . Financial Services Board find[s] necessary to monitor deposits and Colorado loan activity." Each annual report filed by a federally-chartered institution must include either: (a) a certification from the institution's primary federal regulator confirming

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[1] Colo. Rev. Stat. § 11-25-107 (1995).

the accuracy of the institution's report; or (b) a "special report" from an independent public accountant confirming the accuracy of the institution's report.

In addition, Section 11-25-107 requires financial institutions to give the Financial Services Board notice of any branch closings within Colorado and to include in those notices "a detailed statement of the reasons for the decision to close the branch and statistical and other information in support of such reasons."

II. Discussion

The Home Owners' Loan Act ("HOLA") expressly authorizes the Office of Thrift Supervision to "provide for the . . . examination, operation, and regulation" of federal savings associations.[2] It is well established that this grant of authority to regulate, monitor, and examine federal savings associations is exclusive. For example, in Conference of Federal Savings and Loan Associations v. Stein, 604 F.2d 1256, 1260 (9th Cir. 1979), the Ninth Circuit Court of Appeals concluded that "the regulatory control of [the Federal Home Loan Bank Board, OTS's predecessor,] over federal savings and loan associations is so pervasive as to leave no room for state regulatory control." In that case the Court concluded that a state law that authorized state authorities to "monitor . . . the lending patterns and practices" of federal savings associations was preempted.[3] This decision was affirmed by the United States Supreme Court.[4]

The HOLA makes only one statutory exception to the exclusive authority of the OTS to monitor and examine federal savings associations. The HOLA provision conferring trust powers on federal savings associations provides that:

> The state banking authority involved may have access to reports of examination made by the Director insofar as such reports relate to the trust department of such association, but nothing in this subsection shall be construed as authorizing such state banking authority to examine the books, records, and assets of such association.[5]

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[2] 12 U.S.C.A. § 1464(a) (West Supp. 1995).

[3] 604 F.2d 1256, 1259-1260.

[4] Aff'd mem. 445 U.S. 921 (1980).

[5] 12 U.S.C.A. § 1464(n)(2) (West Supp. 1995).

As is apparent from the foregoing provision, states generally have no authority to examine or monitor the operations of federal savings associations. Beyond the narrow statutory exception regarding trust operations, the OTS and its predecessor have permitted states to review records of savings associations or obtain reports from savings associations only in very limited circumstances, such as where necessary for purposes of state escheat laws and tax collection.[6]

Colorado's attempt to compel institutions to produce "comprehensive" information on their core deposit taking, lending, and branching operations clearly does not fall within any of the narrow exceptions under which states have been permitted to review discrete aspects of the operations of federal savings associations. It is well established that federal law has completely occupied the field of regulation in each of the areas where Colorado seeks to compel reports, i.e., lending, deposit taking, and branching.[7] Accordingly, we conclude that Section 11-25-107 of the Colorado Revised Statutes constitutes an impermissible attempt to monitor and examine federal savings associations.[8]

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

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

Very truly yours,

Carolyn J. Buck
Chief Counsel

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[6] FHLBB Op. by Long, May 24, 1984 (escheat laws); and OTS Op. Chief Counsel, May 10, 1995 (tax).

[7] E.g., FHLBB Op. by Quillian, April 28, 1987 (lending and examination); OTS Op. Chief Counsel, Oct. 11, 1991 (deposit taking); and OTS Op. Chief Counsel, Nov. 17, 1993 (branching), and cases cited therein.

[8] See OCC Letter from Glidden, Feb. 26, 1993 (concluding that a state requirement that national banks file quarterly reports on their credit card operations constituted an impermissible attempt to inspect and examine national banks).

cc: Commissioner, Colorado Financial Services Board
All OTS Regional Directors and Regional Counsel