



Office of Thrift Supervision  
Department of the Treasury

94/CS-03

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May 16, 1994

MEMORANDUM

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SUBJECT: Authority of savings associations to establish and  
operate mobile banking facilities or ATMs

I. SUMMARY

This responds to a memorandum from your office dated November 4, 1993, regarding thrift use of mobile banking facilities. A custom van manufacturer has asked your office whether savings associations have the authority to purchase and operate its vans as full service mobile branch facilities, or to equip the vans with automated teller machines ("ATMs"). In addition, you seek our guidance on whether the OTS regional offices would have delegated authority to act on any applications or notices required to be filed with the OTS to undertake the foregoing services.

For the reasons set forth below, we conclude that Federal thrifts may own and operate full-service mobile banking facilities as branch offices. Such mobile banking facilities must comply with Federal statutes and regulations applicable to "brick and mortar," fixed branch offices. Staff of OTS regional offices may act on mobile branch office notices and applications under delegated authority, unless proposals present significant issues of law or policy. Federal thrifts also may own and operate mobile ATM facilities or participate with other financial institutions in mobile ATM operations on an unlimited geographic basis without prior notice or application to the OTS, subject to compliance with OTS regulations governing remote service units and branch security procedures.

## II. BACKGROUND

The manufacturer's mobile banking facilities are vans equipped with standard ATM machines used by financial institutions for deposits, withdrawals, account transfers and loan payments. In addition, the vans may be customized with communication devices, terminals, and other equipment operated by association employees or agents to open accounts, process loans and perform other so-called "real-time transactions." In this configuration, the vans make available all banking services that fixed branch offices can offer.

## III. DISCUSSION

### A. OTS Authority to Regulate Branching

It is well-established that the OTS has plenary authority to regulate the branching and other activities of Federal thrifts,<sup>1</sup> and complete discretion to determine by regulation what constitutes a branch.<sup>2</sup> Mobile banking facilities have been authorized since 1966 by regulation of the OTS and its predecessor, the Federal Home Loan Bank Board ("FHLBB").<sup>3</sup> However, none of the current statutes or regulations administered by the OTS explicitly mention mobile banking facilities.<sup>4</sup>

Under the current branching regulation,<sup>5</sup> "branch office" is defined as any "office other than [an association's] home office, agency office, data processing or administrative office, or a remote service unit . . . ."<sup>6</sup> This provision authorizes the transaction of any business of a Federal savings association at a

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<sup>1</sup> Fidelity Federal S. & L. Ass'n. v. De La Cuesta, 458 U.S. 141, 145 citing People v. Coast Federal S. & L. Ass'n., 98 F.Supp. 311, 316 (S.D. Cal. 1951); Independent Bankers Ass'n. of America v. Fed. Home Loan Bank Bd., 557 F.Supp. 23 (D.D.C. 1982).

<sup>2</sup> Bloomfield F. S. & L. Ass'n v. American Com. St. Corp., 396 F.Supp. 384, 389 (1975), citing Bridgeport F. S. & L. Ass'n v. Fed. Home Loan Bank Bd., 307 F.2d 580, 584 (3rd Cir. 1962).

<sup>3</sup> See, e.g., 12 C.F.R § 545.14.4 (1966).

<sup>4</sup> Our analysis is confined to the authority of Federal thrifts under Federal laws and regulations to offer the above-described services. State thrift branching activities and related powers are governed primarily by state law.

<sup>5</sup> 12 C.F.R. § 545.92 (1993).

<sup>6</sup> Id. § 545.92(a).

branch office.<sup>7</sup> Although for some purposes a branch office of a savings association is considered a fixed office that has "premises" (i.e., a tract of land with a building),<sup>8</sup> the definition of branch office and other provisions of the current branching regulation do not limit branch offices to fixed locations or permanent buildings, nor do the provisions distinguish between mobile and non-mobile branches.

To date, the OTS has not issued any opinions under the current branching regulation specifically addressing the permissibility of mobile branch facilities. Nevertheless, as discussed below, regulations and pronouncements of the FHLBB, combined with subsequent OTS amendments of those regulations confirm that Federal thrifts are permitted to own and operate mobile customer service facilities.

#### B. History of Mobile Facilities Regulation

From 1966 to 1980, 12 C.F.R. § 545.14-4 (the "mobile facilities regulation") explicitly authorized Federal savings associations to establish and operate "mobile facilities." The term "mobile facility" was not defined in the mobile facilities regulation or any other FHLBB regulation. Thrifts were permitted to conduct at such facilities any business of the association conducted at fixed branch offices, except the approval of loans not secured by a customer's savings account.<sup>9</sup>

Mobile facilities were subject to many of the requirements and limitations applicable to branch offices and other types of facilities then authorized. For example, the FHLBB's policy statement on branching by Federal thrifts, first codified in 1967, was amended in 1968 to include mobile facilities.<sup>10</sup> Security regulations adopted in 1969<sup>11</sup> to implement the Bank

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<sup>7</sup> Id.

<sup>8</sup> See, e.g., 58 Fed. Reg. 49083, 49084 (Sept. 21, 1993) (joint policy statement implementing the branch closing provisions of section 42 of the Federal Deposit Insurance Act, 12 U.S.C. § 1831r-1, discussing various meanings of the term "branch").

<sup>9</sup> 12 C.F.R. § 545.14-4(a)(4) (1966).

<sup>10</sup> 33 Fed. Reg. 18229 (Dec. 7, 1968), amending 12 C.F.R. § 556.5 (1969) ("branching policy statement").

<sup>11</sup> 34 Fed. Reg. 621 (Jan. 16, 1969), codified at 12 C.F.R. Part 563a (1969) recodified at 12 C.F.R. Part 568 (1993) ("security regulation").

Protection Act of 1968<sup>12</sup> imposed various security requirements on all thrift "branch" offices, defined in the security regulation as "any branch business quarters, agency, additional office, mobile facility, or any branch place of business . . ."<sup>13</sup>

The mobile facilities regulation was challenged four years after its promulgation and upheld as a valid exercise of the FHLBB's authority under section 5(a) of the Home Owners' Loan Act ("HOLA"). The United States Court of Appeals for the Eighth Circuit was persuaded that the FHLBB, in adopting the regulation, had given consideration to the "best practices" of thrift institutions, as required by section 5(a) of the HOLA. In support of its ruling, the court noted:

No radical concept underlies the placing of wheels under a structure so as to constitute an office capable of moving from place to place. The utility and sensibility of a traveling office as a method for providing limited savings and loan services needed by a small community would seem rather obvious.<sup>14</sup>

The most recent version of the mobile facilities regulation limited operations to two or more specific sites with regular hours of operation not less than 10 miles from the site of any home or branch office.<sup>15</sup>

In 1980 the mobile facilities regulation was rescinded and the standards therein consolidated into an amended branching regulation.<sup>16</sup> In the proposal to consolidate the regulations governing mobile and other types of customer facilities, the FHLBB stated: "The Bank Board proposes to eliminate all regulatory distinctions between full service, limited service, mobile, and satellite offices, and reduce the criteria for all facilities."<sup>17</sup> Henceforth, according to the preamble to the

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<sup>12</sup> Pub. L. No. 90-389, 82 Stat. 294 (1968), codified at 12 U.S.C. § 1881, et seq. (Supp. IV 1992).

<sup>13</sup> 12 C.F.R. § 563a.1(d) (1969) (emphasis added.)

<sup>14</sup> Central S. & L. Ass'n of Chariton, Iowa v. Fed. Home Loan Bank Bd., 422 F.2d 504, 506-507 (8th Cir. 1970).

<sup>15</sup> 12 C.F.R. § 545.14-4(c) (1980).

<sup>16</sup> 45 Fed. Reg. 31046 (May 12, 1980).

<sup>17</sup> 44 Fed. Reg. 36060, 36061 (June 20, 1979) (emphasis added.)

proposal, all customer service facilities would be treated as branch offices subject to the standards and procedures of the revised branching regulation:

The Bank Board believes that arbitrary limits on size, location, cost, and hours of operation of customer service facilities may unnecessarily stifle development of innovative means of providing savings and loan services. The proposed consolidation would allow an association to apply for a branch, describe the type of branch which would best serve the public, and provide documentation to justify the appropriateness of the proposed branch. No longer would a "satellite"-type facility be required to be within 5 miles of the nearest branch, for example, or a mobile facility be limited to operating only certain hours on certain days of the week.<sup>18</sup>

As part of this regulatory consolidation, the FHLBB also adopted provisions governing upgrading of approved branch offices.<sup>19</sup> Under the upgrade regulation, Federal thrifts were permitted to operate facilities approved before 1981 outside of the limitations specified in the former, separate regulations on "mobile," "satellite" and "limited service" facilities.<sup>20</sup> In the same action, the FHLBB also adopted a definition of "branch office" applicable to the revised branching regulation,<sup>21</sup> which has remained essentially unchanged.<sup>22</sup>

Other developments since 1980 confirmed the FHLBB's intent to eliminate regulatory distinctions between customer service facilities based on their mobility or other "physical" characteristics and treat all facilities that offer branch-type banking services as branch offices, except where specifically excluded from the definition of branch office. For example, six months after the FHLBB consolidated the facilities regulations the FHLBB amended the branching policy statement to eliminate all

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<sup>18</sup> Id. at 36061 (emphasis in original.)

<sup>19</sup> 45 Fed. Reg. 31046 (May 12, 1980), codified at 12 C.F.R. § 545.14-1 (1980) ("upgrade regulation").

<sup>20</sup> Id.

<sup>21</sup> 45 Fed. Reg. 31046 (May 12, 1980), codified at 12 C.F.R. § 545.14(a) (1980).

<sup>22</sup> See 12 C.F.R. § 545.92(a) (1993).

references to mobile facilities.<sup>23</sup> More recently, the OTS amended the security regulation and rescinded the separate definition of "branch" therein that had referenced mobile facilities. In so doing, the OTS noted: "[T]he definitions have been eliminated, and any definition needed has been provided where the defined word is first used."<sup>24</sup> The OTS also recently rescinded the branch upgrade regulation, stating: "OTS no longer distinguishes among branch types, thus an application to upgrade is obsolete."<sup>25</sup>

The FHLBB and the OTS amended the branching regulation and branching policy statement several times since 1980 without changing the definition of "branch office" or in any way limiting the authority of Federal thrifts to operate mobile branch offices or other mobile banking facilities. On the contrary, the FHLBB's and the OTS's regulatory amendments have gradually expanded the branching authority of Federal thrifts. The most recent amendment to the branching policy statement removed previous geographic restrictions to permit Federal associations to establish branches in any state, subject only to certain capital, community investment and other supervisory standards.<sup>26</sup> The amendments were adopted, among other reasons, to improve customer service and increase healthy competition among financial institutions.<sup>27</sup>

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<sup>23</sup> 45 Fed. Reg. 83196 (Dec. 18, 1980).

<sup>24</sup> 55 Fed. Reg. 10247 (Mar. 20, 1990) (proposal to amend the security regulations to implement amendments to the Bank Protection Act); adopted unchanged in final form at 56 Fed. Reg. 29565 (June 28, 1991), codified at 12 C.F.R. Part 568 (1993).

<sup>25</sup> 57 Fed. Reg. 40350, 40352 (Sept. 3, 1992) (proposal to amend regulations under the Presidential Regulatory Review Program); adopted unchanged in final form at 58 Fed. Reg. 4308 (Jan. 14, 1993).

<sup>26</sup> 57 Fed. Reg. 12203 (Apr. 9, 1992).

<sup>27</sup> Id. at 12205. We note that recent informal inquiries to you and other regional offices regarding thrift operation of mobile facilities reflect concern over competition with other financial institutions, as well as a desire to improve customer services. In this regard, we note that national banks have the authority under the McFadden Act, 12 U.S.C. § 36(c), to own and operate mobile ATMs and mobile branches in jurisdictions where state banks may establish branches. See, e.g., Decision of the Comptroller of the Currency on the Application of Michigan National Bank, Farmington Hills, Michigan, to Establish and Operate a Manned Van as a Branch (Sept. 11, 1992).

The OTS generally has affirmed the FHLBB's determination to treat all customer service facilities as branch offices unless the facility is specifically excluded from the definition of branch office. Therefore, we conclude that Federal thrifts have the authority to own and operate mobile branch offices and other mobile service facilities consistent with the branching regulation and the branching policy statement, or other applicable OTS regulations.

C. Requirements Applicable to Mobile Branch Offices

Mobile branch offices must comply with the branching regulation and the branching policy statement, and other statutes and regulations applicable to Federal thrift branch offices. In this regard, any mobile branch office intended to be used in a state other than where the home office of the association is located must comply with section 5(r) of the HOLA<sup>28</sup> and other limitations set forth in the branching policy statement. In addition, Federal thrifts may not establish a mobile branch office without prior approval by the OTS under the branching regulation. In its evaluation of a mobile branch office application, the OTS must take into account the applicant's record of meeting the credit needs of the community, as required by the Community Reinvestment Act and the OTS's regulations thereunder.<sup>29</sup> Finally, changes to approved mobile branch office programs that have the effect of terminating service to any areas within an association's delineated community also must comply with the public notice and other requirements of the joint policy statement on branch closings.<sup>30</sup>

As you know, any notice or application for a branch office presenting significant issues of law or policy is not eligible for processing in the regional offices.<sup>31</sup> Nevertheless, we do not consider a mobile facility's "mobility" alone as presenting such issues.

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<sup>28</sup> 12 U.S.C. § 1464(r) (Supp. IV 1992).

<sup>29</sup> 12 U.S.C. § 2901, et seq. (Supp. IV 1992); 12 C.F.R. Part 563e (1993).

<sup>30</sup> 58 Fed. Reg. 49083 (Sept. 21, 1993).

<sup>31</sup> See 12 C.F.R. § 516.2(f) (1993) (extending time for OTS's review of applications raising significant issues of law or policy).

D. Current Authority to Own and Operate Mobile ATM Facilities

Current OTS regulations permit Federal thrifts to establish and use remote service units or "RSUs" (defined to include devices typically known as ATMs) and participate with other institutions in RSU operations on an unrestricted geographic basis.<sup>32</sup> The regulation does not require that RSUs be affixed to a building or other structure or remain in a fixed location. In view of regulatory developments since 1980 - particularly in the area of branching - we believe it would be inconsistent to conclude that Federal thrifts currently have authority to own and operate full-service mobile branches and other mobile facilities, but not mobile ATMs.<sup>33</sup> Because RSUs are specifically excluded from the definition of branch office,<sup>34</sup> mobile ATMs are not required to comply with the standards and procedures set forth in the branching regulation and branching policy statement, including the prior notice and application requirements therein.

E. Mobile Facility Security Requirements

You expressed concern about the ability of an association operating a mobile branch or mobile ATM to comply with 12 C.F.R. Part 568. Part 568 requires each association to adopt appropriate security procedures for its main office and branches to discourage robberies, burglaries, and larcenies and to assist in the identification and prosecution of persons who commit such

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<sup>32</sup> 12 C.F.R. § 545.141 (1993) ("RSU regulation").

<sup>33</sup> Amendments to the RSU regulation since its promulgation as a pilot project in 1974 have expanded Federal thrift authority to operate these devices consistent with developments in branching policy. See, e.g., 46 Fed. Reg. 41763 (Aug. 18, 1981) (removing all previous geographic restrictions applicable to RSUs).

<sup>34</sup> The RSU regulation also states that an RSU is not a branch, satellite, or other type of facility or agency of a Federal savings association. 12 C.F.R. § 545.141(a)(3) (1993). Nevertheless, a "manned" ATM (i.e., any RSU-type equipment whose operation by a customer would require the assistance of a thrift's employee or agent) would raise significant issues as to whether the facility would constitute a branch office for purposes of the branching regulation. See, e.g., FHLBB Memorandum from C. Thomas Long, Deputy General Counsel, to Francis M. Passarelli, Associate Director (Jan. 27, 1984), concluding, inter alia, that a "manned" ATM constitutes a branch office.



acts.<sup>35</sup> These security requirements apply with equal force to all branches, including mobile branches.

In establishing a security program, a savings association must determine what security devices are appropriate taking into consideration, among other things, the physical characteristics or the structure of the office.<sup>36</sup> In the case of a mobile branch, its mobility is a physical characteristic an association must consider in maintaining its security.

Moreover, in reviewing an application to establish a mobile branch, the OTS may properly require an association to submit a plan specifying the security measures it will impose if it opens a mobile branch. The OTS may consider the adequacy of those security measures in deciding whether to approve the application.<sup>37</sup>

In addition, RSUs must comply with Part 568 as though such units were offices except to the extent that a savings association satisfies the Regional Director that the requirements of Part 568 are inappropriate.<sup>38</sup> In such a case, a savings association must adopt alternative procedures satisfactory to the Regional Director.<sup>39</sup> In our opinion, the Regional Director's authority under this provision extends to all RSU proposals, including those for mobile ATMs.

We hope the foregoing is responsive to your inquiry. If you have any questions, please direct them to Michael Vallely, Senior Attorney, at (202) 906-6241.

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<sup>35</sup> 12 C.F.R. § 568.1(a) (1993).

<sup>36</sup> Id. § 568.3(b)(5)(vi).

<sup>37</sup> The OTS may approve or deny a branching application based on information available from any source and supervisory objection may be interposed at any point during the processing of the application. 12 C.F.R. § 556.5(c)(1) (1993). Furthermore, the OTS will approve a branch application "only if the overall policies, condition, and operation of the applicant afford no basis for supervisory objection. . . ." 12 C.F.R. § 545.92(e)(1) (1993). Security procedures that are inadequate to protect a mobile branch would be a basis for supervisory objection under this regulation.

<sup>38</sup> 12 C.F.R. § 545.141(e) (1993).

<sup>39</sup> Id.