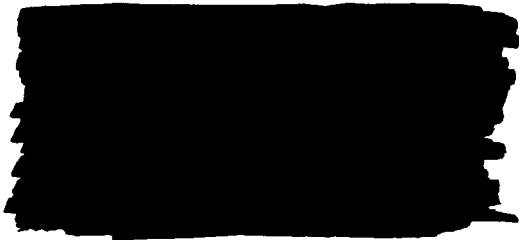




Office of Thrift Supervision
Department of the Treasury

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

October 18, 1994



Re: Status of Wisconsin Law Regarding Consumer
Access to Credit Reports

Dear [REDACTED]

This responds to your inquiry regarding whether a Wisconsin law providing for consumer access to credit reports is applicable to federal savings associations.

The law in question, 1993 Wisconsin Act 425 ("Wisconsin Act"), provides that if an individual who is a customer or credit applicant asks for a copy of any written credit report held by a savings association that relates to that individual and for which a fee is imposed, the savings association shall provide such copy to the individual at no extra charge.

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 regulate the relationship between federal savings associations and their borrowers are preempted.¹ The

1. E.g., OTS Op. by Solomon, July 20, 1993 (confirming the validity of prior interpretive opinions regarding the preemption of state laws imposing limits on late fees on residential mortgage loans and consumer loans); OTS Op. by Weinstein, January 1, 1991 (state statute is preempted insofar as it purports to regulate interest payments, service charges, and disclosure of information on escrow accounts for mortgages between federal savings associations and their borrowers); FHLBB Op. by Quillian, April 28, 1987 (state regulations purporting to regulate lending disclosure and advertising are preempted); and FHLBB Op. by Raiden, November

courts have repeatedly reached the same conclusion.²

For the same reasons set forth in the foregoing authorities, we believe that the Wisconsin Act is preempted by federal law with regard to federal savings associations. Relations promulgated by the Office of Thrift Supervision have occupied the field of lending regulation for federal savings associations. See 12 C.F.R. §§ 545.2 and 545.32(b)(5).

We are aware that, in connection with enactment of the Riegle-Neal Interstate Banking and Branching Efficiency Act, Congress recently urged the federal banking agencies to give careful consideration to the scope of their preemption rulings. H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess., 53-56. In response, we anticipate that the OTS will soon undertake a comprehensive review of the scope of federal preemption for federal savings associations. We would welcome input from your Office as part of that review. To avoid introducing needless uncertainty into this area, however, past preemption precedents and existing OTS regulations will continue to guide OTS preemption determinations until our review is complete. Federal savings associations may therefore continue to rely on those precedents and regulations.³

(Footnote 1 continued from previous page)

12, 1985 (state law requiring lending disclosures in addition to those mandated by federal law are preempted with respect to federal associations).

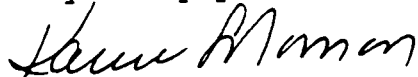
2. E.g., Fidelity Federal Savings and Loan Association v. de la Cuesta, 458 U.S. 141 (1982) (state law prohibiting due-on-sale clauses preempted); First Federal Savings & Loan Association v. Greenwald, 591 F. 2d 417 (1st Cir. 1979) (state escrow statute preempted); and Wisconsin League of Financial Institutions v. Galecki, 707 F. Supp. 401 (W.D. Wis. 1989) (state statute regulating escrow accounts and transfer of servicing rights preempted).

3. But see Pub. L. No. 101-328, § 102(b)(5), 108 Stat. 2338 (1994) (immediately reversing OTS override of Texas homestead provision) and First Gibraltar Bank, FSB v. Morales, 19 F. 3d. 1032 (1994).

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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

cc: Regional Director
Regional Counsel
Central Region