Office of Thrift Supervision
Department of the Treasury

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

February 12, 1996

[redacted]

RE: Authority of Federal Thrifts to Sell Credit-related Insurance

Dear [redacted]

This responds to your inquiry, submitted on behalf of [redacted] (the "Association"), regarding whether the Association's operating subsidiary may sell, on an agency basis, credit-related unemployment and single interest property insurance. We conclude that it may, subject to the conditions noted below.

The Association is a wholly-owned subsidiary of a bank holding company. The Association's operating subsidiary currently sells, on an agency basis, credit-related death and disability insurance for loans originated by the operating subsidiary, the Association, and affiliates of the Association. Under the terms of the insurance, the underwriter (an unaffiliated entity) is obligated to repay the outstanding balance on any loan covered upon the death or disability of the borrower, subject to various conditions. The operating subsidiary wishes to begin selling credit insurance policies that cover not only death and disability, but also unemployment of the borrower or destruction of the property securing an insured loan.

The unemployment insurance the Association proposes to offer would be available only for consumer loans with a maximum term of 60 months. The unemployment insurance would obligate the insurance company to pay to the Association a certain number of monthly loan payments, which would vary proportionately with the term of the loan. (The policy would not cover the entire loan balance.) To make a claim under the insurance policy, the policy holder would have to demonstrate that he or she meets the involuntary unemployment eligibility requirements. The insurance company then would issue a check directly to the Association for the eligible loan payments. The borrower would remain obligated for any amounts due not covered by the insurance.

The single interest property insurance the institution proposes to offer would be available only on consumer loans with a maximum term of 60 months. The property insurance would apply only to personal property pledged to secure consumer loans. The policy would cover the lender's interest in the collateral, but not that of the borrower. To make a claim under the insurance policy, the policy holder would have to demonstrate that the covered property was destroyed (e.g., by fire, lightening, windstorm). The insurance company then would pay off the insured's entire outstanding indebtedness to the Association (or in the case of a loan secured by more than one piece of personal property, the portion of the loan secured by the destroyed collateral), regardless of the value of the property.

The Office of Thrift Supervision ("OTS") has previously opined that federal savings associations and their operating subsidiaries may sell credit insurance on an agency basis for loans that they or any of their affiliates originate, subject to certain conditions.[1] The OTS has also opined that operating subsidiaries of federal savings associations may underwrite credit insurance for loans that they, their parent association, or subsidiaries of the parent association originate, subject to certain conditions.[2] Although the coverage of the particular credit-related insurance policies discussed in our prior opinions happened to be limited to the death or disability of the borrower, there was no intent on our part to restrict the scope of coverage of the credit-related insurance policies that may be sold by savings associations and their operating subsidiaries to death and disability.

Our conclusion that federal savings associations and their operating subsidiaries may sell credit insurance was based upon a recognition that the statutory authorization to make loans necessarily carries with it the authority to negotiate the terms and conditions governing repayment of the loan, including terms and conditions that reduce the risk of default.[3] Offering credit-related insurance is one way savings associations can reduce the risk of default. Under this analysis, the precise nature of the risk insured does not affect the authority of a savings association or its operating subsidiary to sell credit-related insurance so long as the risk has a reasonable connection to the borrower's ability or willingness to repay the loan or to the lender's level of security in the event of default. Clearly, loss of a job or destruction of the collateral securing a loan can have a significant impact on a borrower's ability and willingness to repay a loan and on the lender's level of security.

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[1] OTS Op. Chief Counsel, Oct. 17, 1994.

[2] OTS Op. Chief Counsel, Jan. 10, 1995.

[3] OTS Op. Chief Counsel, Jan. 10, 1995, at p. 5 and p. 7, n. 16.

Accordingly, we conclude that the Association and its operating subsidiary may sell credit insurance that covers these risks. When doing so, however, the Association and its operating subsidiary must comply with all applicable laws, including applicable state insurance laws and the laws governing bank holding companies and their subsidiaries (as administered by the Federal Reserve Board), as well as the relevant conditions stated in the above cited OTS opinions on credit insurance. We express no opinion as to whether the credit insurance activities proposed by the Association's operating subsidiary would conform to the Federal Reserve Board's regulations governing the activities of bank holding companies and their subsidiaries.

Moreover, because the activities proposed for the Association's operating subsidiary fall within the scope of our prior opinions regarding sales of credit insurance, we do not here address the question of whether federal savings associations have legal authority to sell insurance that is not credit-related.

In reaching the foregoing conclusions, we have relied on the factual representations contained in the materials you submitted to us and in conversations with OTS staff, as summarized herein. Our conclusions depend upon the accuracy and completeness of those representations. Any material change in circumstances from those described herein could result in different conclusions.

If you have any further questions regarding this matter, you may contact Dorene Rosenthal, Senior Attorney, at (202) 906-7268.

Very truly yours,

Carolyn J. Buck

Carolyn J. Buck
Chief Counsel

cc: All Regional Directors
All Regional Counsel