

Oklahoma Restrictions on Cash Dispensing ATMs

Summary Conclusion: Oklahoma state laws purporting to (1) bar out-of-state federal savings associations from engaging in authorized activities, including electronic operations; and (2) require written notice to the State before installing, operating, or utilizing ATMs, are preempted by federal law. State laws purporting to regulate activities of a federal savings association's operating subsidiary are preempted to the same extent such laws are preempted for the federal savings association.

Date: June 12, 2002

Subjects: Home Owners' Loan Act/Savings Association Powers

P-2002-5



Office of Thrift Supervision
Department of the Treasury

Chief Counsel

1700 G Street, N.W., Washington, DC 20552 • (202) 906-6251

June 12, 2002

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Re: Oklahoma Restrictions on Cash Dispensing ATMs

Dear []:

This responds to your inquiry on behalf of [] ("Association"), a federal savings association, and [], its wholly-owned non-financial institution operating subsidiary. You ask whether federal law preempts for the operating subsidiary Oklahoma restrictions on the establishment or maintenance of cash dispensing automated teller machines ("ATMs"). We conclude that the state law restrictions do not apply to the operating subsidiary (or the Association) because of federal preemption.

The Oklahoma Banking Department ("Banking Department") stated in a May 17, 2002 letter to OTS, and orally advised OTS and you, that Oklahoma law allows a federal savings association to install, operate, or utilize ATMs in the state only if the association has a main office, approved branch, or other office location in Oklahoma and provides written notice to the State Banking Commissioner. The Banking Department further advised that Oklahoma law does not allow a non-financial institution subsidiary of a financial institution not located in the state to install, operate, or utilize ATMs. The Banking Department bases this interpretation on a provision of Oklahoma law that specifically authorizes the former.¹ In contrast, no Oklahoma law provisions addresses the latter.

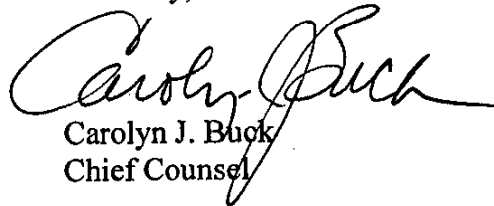
The Banking Department's interpretation of state law to bar a non-financial institution subsidiary of a federal savings association not located in the state from installing, operating, or utilizing ATMs is preempted as applied. OTS has previously

¹ Okl. Stat. Ann. tit. 6, § 422(A). This provision applies to any "savings and loan association," a term that Oklahoma law does not define. Oklahoma law does, however, define a "savings association" to include a federal savings association. Okl. Stat. Ann. tit. 6, § 102(58). The Association has no branches in Oklahoma.

opined that state laws purporting to bar out-of-state federal savings associations from engaging in various authorized activities, including electronic operations, are preempted.² Further, the provision of Oklahoma law purporting to require federal savings associations to provide written notice to the State Banking Commissioner before installing, operating, or utilizing ATMs is also preempted. OTS regulations and opinions establish that state laws that purport to impose notice requirements on federal savings associations in order to conduct authorized thrift activities, including electronic operations, in the state are preempted.³ OTS has consistently concluded that state laws purporting to regulate activities of a federal savings association operating subsidiary are preempted to the same extent such laws are preempted for the federal savings association.⁴

We trust this is responsive to your inquiry. If you have any further questions, please contact Richard Bennett, Counsel (Banking and Finance), at (202) 906-7409.

Sincerely,



Carolyn J. Buck
Chief Counsel

cc: O. Dudley Gilbert, Legal Counsel
Oklahoma Banking Department
OTS Regional Directors
OTS Regional Counsel

² See, e.g., OTS Mem. Chief Counsel, 12/22/98 at 8-10 (state law restrictions on out-of-state financial institution establishing or operating electronic branches preempted); OTS Op. Chief Counsel, 7/1/98 at 11 (same).

³ See, e.g., OTS Mem. Chief Counsel, 12/22/98 (Massachusetts application and notice requirements for ATMs preempted); OTS Op. Chief Counsel, 7/1/98 (Iowa informational statements and registration requirement regarding ATM operations preempted). See also 12 C.F.R. §§ 557.12(g) (State licensing or registration requirements preempted) and 560.2(b)(1) (State licensing, registration, filings, or reports by creditors preempted) (2002).

⁴ See 12 C.F.R. § 559.3(n)(1) (2002) ("State law applies to operating subsidiaries only to the extent it applies to [federal savings associations]"); OTS Op. Chief Counsel (7/26/99) at 8-12 (state mortgage lender licensing requirements preempted for federal savings association operating subsidiaries); OTS Op. Chief Counsel (7/29/99) at 3 (same).