

P-97-9



**Office of Thrift Supervision**  
Department of the Treasury

*Chief Counsel*

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

September 19, 1997

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**Re: Establishment of Automatic Loan Machines**

Dear [ ]:

This responds to your letter of June 23, 1997, and subsequent information provided August 15, 1997, requesting OTS concurrence that [ ] (formerly [ ]), and hereinafter referred to as the "Bank") may establish automatic loan machines ("ALMs") under the OTS remote service unit ("RSU") regulation, 12 C.F.R. § 545.141.

On the basis of the facts presented in your request, we conclude that an ALM, operated in the manner proposed by the Bank, is an RSU under 12 C.F.R. § 545.141.

**I. Background**

The Bank is a Federally chartered savings bank that desires to establish ALMs in its home office and branches (including through-the-wall placement and parking lot placement), as well as in other locations not associated with its home office or a branch, such as shopping malls or office buildings. The ALMs will be deployed pursuant to an agreement with [CORPORATION] ("[CORPORATION]"), a publicly held corporation that markets ALMs and associated hardware and software. The Bank intends that the ALMs will help process consumer loans and applications for checking accounts.

A. ALM loan processing

The ALMs will be fully automated systems that utilize [CORPORATION'S] proprietary [TYPE A] technology to process consumer loans between \$1,000 and \$8,000, generate the underlying loan documentation and issue conditionally-approved Bank checks.

In order to obtain a loan, an applicant would enter certain information at the ALM. An applicant would swipe a credit card and driver's license through a magnetic reader and would use the ALM's touch-screen terminal to provide other information. The ALM then would initiate a telephone call to a credit bureau to obtain the applicant's credit history. Once all of this information has been entered or received, the ALM transfers it electronically (and instantaneously) to a central server located at [CORPORATION'S] Network Operations Center. The central server then applies a credit-scoring program, based on underwriting standards approved by the Bank, that indicates whether and on what terms the loan can be approved.<sup>1</sup>

The ALM does not credit funds to an applicant's account. Rather, the ALM issues a paper check that bears a restrictive endorsement stating:

The loan account will be established only upon presentation of this check at [the Bank or] by deposit at [the Bank] or at your financial institution for collection. Checking accounts are established only upon receipt of an initial deposit.

The applicant may obtain funds only through deposit of the check at a financial institution. As the check is issued to the applicant, the ALM sends data about the loan to the Bank's database. Personnel from the Bank's Consumer Loan Department then review the data for completeness and accuracy.<sup>2</sup> If satisfied with the data, Bank personnel enter the loan in the Bank's central computer loan files and post the loan account to the proper accounts within the Bank. The Bank then will honor the check on presentment. If the review process reveals inaccuracy or incompleteness, the Bank may refuse to honor the check on presentment.

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<sup>1</sup> The Board of Directors of the Bank reviewed and approved the underwriting standards and procedures to be used by the ALMs for loan underwriting on June 23, 1997. The Board will periodically review the ALM Credit Policy in light of experience with the ALM system. Each application will go through the Fair, Isaac and Company credit scoring system. The Automated Software License Agreement between the Bank and [CORPORATION] expressly provides that the records to be maintained by [CORPORATION] shall at all times be available for examination and audit by the OTS.

<sup>2</sup> This process does not appear to entail a further review of the creditworthiness of the applicant. Nor does the Bank intend to implement a "second-look" program for applicants rejected at the ALM.



payment to a merchant or to make a transfer to another account held by a member.<sup>5</sup>

This provision of the HOLA, first enacted in 1980,<sup>6</sup> was intended to codify an existing regulation of the Federal Home Loan Bank Board (“FHLBB”) that permitted the establishment of remote service units that would perform certain specified functions.<sup>7</sup> Statutory confirmation of Federal thrifts’ authority to establish remote service units had been made necessary by a 1979 court decision that would have vacated the FHLBB’s rule.<sup>8</sup>

In response to Congress’ 1980 enactment, the FHLBB revised the remote service unit regulation, largely in the form that it remains today. Section 545.141 of the OTS regulations currently authorizes Federal savings banks to establish or use RSUs and participate with others in RSU operations on an unrestricted geographic basis.<sup>9</sup> The RSU Regulation defines the term “remote service unit” as

an information processing device, including associated equipment, structures and systems, by which information relating to financial services rendered to the public is stored and transmitted, instantaneously or otherwise, to a financial institution. . . . The term includes, without limitation, point-of-sale terminals, merchant-operated terminals, cash-dispensing machines, and automated teller machines. . . .<sup>10</sup>

The term “RSU account” is defined as a savings or loan account or demand account that may be accessed through use of an RSU.<sup>11</sup> The regulation also provides that “[n]o RSU may be used to open a savings account, a demand account or establish a loan account.”<sup>12</sup>

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<sup>5</sup> S. Rep. No. 96-368, 96<sup>th</sup> Cong., 2d Sess. 10 (1980), *reprinted in* 1980 U.S.C.C.A.N. 246.

<sup>6</sup> *See* Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. No. 96-221, § 304, 94 Stat. 146 (1980).

<sup>7</sup> *See* 12 C.F.R. § 545.4-2(c) (1979). This regulation had in turn made permanent a similar but temporary regulation that had been promulgated in 1974. *See* 39 Fed. Reg. 23991 (June 28, 1974) (codified at 12 C.F.R. § 545.4-2 (1975)).

<sup>8</sup> *See American Bankers Ass’n v. Connell*, 686 F.2d 953 (D.C. Cir.) (*per curiam*), *cert. denied*, 444 U.S. 920 (1979).

<sup>9</sup> 12 C.F.R. § 545.141(b) (1997). (Citations to the Code of Federal Regulations in this opinion are to the 1997 edition, unless otherwise noted.) The regulation also subjects the Bank to the requirements of the Electronic Funds Transfer Act and Regulation E of the Federal Reserve Board, if applicable. Payment by paper check is not an electronic fund transfer occurring at the RSU and therefore Regulation E is not applicable in this case. *See* 12 C.F.R. § 205.3(b), (c).

<sup>10</sup> 12 C.F.R. § 545.141(a)(3). The definition specifically excludes ATMs on the premises of a Federal savings association unless shared with other financial institutions.

<sup>11</sup> 12 C.F.R. § 545.141(a)(4).

<sup>12</sup> 12 C.F.R. § 545.141(b).



deposits or for the origination, processing, or approval of any loans, then the RSU was not a branch.<sup>16</sup>

Whether the prohibition recognized in *Bloomfield* retains vitality in light of extensive changes in technology over the past 20 years is a matter that OTS has begun considering in rulemaking.<sup>17</sup> At present, the prohibition remains a part of the OTS regulations. Our only previous discussion of the scope of the prohibition in section 545.141(b) came in a December 19, 1994 opinion.<sup>18</sup> There we addressed whether unstaffed ATMs established in the offices of participating broker-dealer affiliates would be treated as RSUs and not as branch offices. The ATMs described in that opinion would process savings and checking account deposits and withdrawal and account balance inquiries; render customer assistance through two-way video phones; and incorporate a "day depository" drawer where customers could leave deposits and completed applications for later pick-up by the institution. Noting the institution's representation that an account or loan application would not be reviewed or acted on until the institution received the appropriate documentation at its main office or a branch, we concluded that the ATMs did not contravene the prohibition in section 545.141(b).

The underlying principle that we relied on in the 1994 opinion was that "accounts have been held not to have been opened or established until an association accepts for processing *and* acts upon an application or other completed form."<sup>19</sup> This rule grew out of such divergent requests as those involving a school partnership program,<sup>20</sup> solicitation of customers at a store,<sup>21</sup> use of a courier service,<sup>22</sup> and deposit originators.<sup>23</sup>

The operations that the Bank proposes for its ALMs are functionally equivalent to the arrangements considered in earlier opinions and are consistent with the principle enunciated in the 1994 opinion.<sup>24</sup> As described in your request, the ALMs will take

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<sup>16</sup> See *id.* at 388-89.

<sup>17</sup> See Advance Notice of Proposed Rulemaking, 62 Fed. Reg. 15626 (April 2, 1997).

<sup>18</sup> OTS Op. Chief Counsel (December 19, 1994).

<sup>19</sup> *Id.* at 6 (emphasis in original).

<sup>20</sup> See Op. Dep. C.C. (OTS) (Comizio) (Nov. 20, 1992) at 3-4.

<sup>21</sup> See Op. G.C. (Nov. 21, 1983).

<sup>22</sup> See Op. G.C. (Nov. 20, 1986).

<sup>23</sup> See Op. G.C. (Nov. 20, 1986).

<sup>24</sup> The phrase "used to open" in the prohibitory sentence in section 545.141(b) means that an RSU may not be the sole mechanism by which a loan or demand account is established. The phrase does not mean that an RSU may not be used in any capacity to process a loan or demand account application. A comparable phrase ("use . . . for opening") first appears in the *Bloomfield* decision for the purpose of distinguishing an RSU from a branch office. There is no evidence that the FHLBB intended any other purpose in including the phrase in the RSU regulation. The construction of "used to open" adopted here is consistent the fact a Federal thrift may use non-branch facilities to process loans - e.g., agency offices, see 12 C.F.R. § 545.96(a).

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applications for loans and deposit accounts conditional upon Bank personnel reviewing the accuracy and completeness of the data. In the case of deposit accounts, Bank personnel also perform a fraud check. Bank personnel are empowered to deny a loan application and stop payment on a check or refuse to open a deposit account based upon a review of data received from the ALMs. Bank personnel manually finalize both types of accounts. Thus the loan or account relationship is not established in this case until Bank personnel at another office take action.

### **III. Conclusion**

We conclude that ALMs, operated in the manner proposed by the Bank, qualify as RSUs under 12 C.F.R. § 545.141. Furthermore, we would not regard the proposed activities as exceeding the limitation imposed by the RSU regulation. In reaching the conclusions set forth herein, we have relied on the factual presentations contained in the materials presented to us. Our conclusions depend upon the accuracy and completeness of those representations. Any material change in facts and circumstances from those set forth in your submissions could result in conclusions different from those expressed herein.

Any questions regarding this matter should be directed to Teri M. Valocchi, Counsel (Banking & Finance), Business Transactions Division at (202) 906-7299, or Dwight C. Smith, Deputy Chief Counsel for Business Transactions at (202) 906-6990.

Sincerely,

/s/

Carolyn J. Buck  
Chief Counsel

cc: Regional Directors  
Regional Counsel