



Office of Thrift Supervision
Department of the Treasury

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94/CC-11

June 14, 1994

MEMORANDUM FOR FREDERICK R. CASTEEL
MIDWEST REGIONAL DIRECTOR

FROM: Carolyn B. Lieberman
Acting Chief Counsel

SUBJECT: OTS Authority To Take Enforcement Action Against
Operating Subsidiaries For Violations Of The ECOA

This responds to your inquiry regarding whether the Office of Thrift Supervision ("OTS") has authority to take enforcement action against an operating subsidiary of [REDACTED] (the "Association"), for violations of the Equal Credit Opportunity Act, 15 U.S.C. § 1601 et seq. ("ECOA"). We apologize for the delay in responding.

We have previously concluded that violations of the ECOA constitute "violations of law" (and can sometimes also constitute "unsafe or unsound practices") within the meaning of § 8 of the Federal Deposit Insurance Act ("FDIA").¹ See OTS Op. Chief Counsel, Dec. 27, 1991 (copy attached). Thus, the OTS has authority to take enforcement action for violations of the ECOA by any entity subject to § 8 of the FDIA. Our 1991 opinion focused on enforcement jurisdiction over service corporations, savings and loan holding companies, and subsidiaries of savings and loan holding companies. Operating subsidiaries were not addressed since federal savings associations had not yet been authorized to establish operating subsidiaries.

Based on a review of the FDIA, we have determined that the conclusions of our 1991 opinion apply with equal force to operating subsidiaries. Although operating subsidiaries are not specifically mentioned in FDIA § 8, FDIA § 18 specifically confirms that:

With respect to any subsidiary of an insured savings association . . . the Director of the Office of Thrift Supervision shall . . . have, with respect to such subsidiary, the respective powers that [the Director] has

¹ 12 U.S.C.A. § 1818 (West 1989).

with respect to the insured savings association pursuant to . . . section 1818 of this title [12]. . . .²

FDIA § 8 is codified as § 1818 in the Title 12 of the United States Code. Hence, the foregoing provision establishes that FDIA § 8 applies to "any subsidiary" of a savings association. The term "subsidiary" is defined by the FDIA to include, inter alia, "any company which is owned or controlled directly or indirectly by another company."³ "Control" is deemed to exist when, inter alia, one company owns 25% or more of the voting stock of another company.⁴ Since OTS regulations require federal savings associations to always own more than 50% of the voting stock of their operating subsidiaries,⁵ every operating subsidiary will fall within the definition of "subsidiary" set forth in the FDIA.

Accordingly, we conclude that the OTS has legal authority to take enforcement action against the Association's operating subsidiary for violations of the ECOA.⁶

If your staff would like to discuss these matters further, they should feel free to contact John Flannery, Attorney, at (202) 906-7293.

cc: John Downey
All Regional Directors

² 12 U.S.C.A. § 1818(m)(2)(A) (West 1989).

³ 12 U.S.C.A. § 1813(w)(4) (West 1989).

⁴ 12 U.S.C.A. § 1813(w)(5) (West 1989). See also, 12 U.S.C.A. § 1841(a)(2) (West 1989).

⁵ 12 C.F.R. § 545.81(b)(2).

⁶ For the same reasons stated above, the OTS also has authority to take enforcement action against operating subsidiaries for any violations of the OTS anti-discrimination regulations. 12 C.F.R. Part 528.