



Office of Thrift Supervision  
Department of the Treasury  
1700 G Street, N.W., Washington, D.C. 20553

# RESCINDED

Chief Counsel

August 2, 1996

Any attachments to this document are rescinded only as they relate to national banks and federal savings associations.

**MEMORANDUM FOR:** Chief Executive Officers

**FROM:** Carolyn J. Buck  
Chief Counsel 

**SUBJECT:** OTS' Customer Service Plan for Legal Opinions

I am pleased to distribute OTS' Customer Service Plan for Legal Opinions. We developed the plan to set measurable standards for providing guidance to thrift institutions on legal issues affecting their operations. The function that the Chief Counsel's Office performs in this area is two-fold.

1) We are available to point to existing legal guidance on thrift powers and operations to assist your institution in meeting its competitive challenges. We answer most inquiries within a few days by identifying existing precedent that covers the question.

2) If we have not previously addressed an issue bearing on thrift operations, we provide a formal opinion letter stating the agency's interpretation of statutes and regulations as they apply to the facts presented by the requester. Although a much smaller number of requests fall within this category, they often involve novel questions of law with industry-wide implications. To respond to these requests we must do considerable research and may need additional information from the requester to understand the full import of the question presented. We must also consult with OTS policy and supervisory staff and sometimes with other agencies. Because of the inherent complexity and implications of the questions presented, it may take two to three months to provide appropriate advice. This opinion function differs from that performed by private counsel. In fact, it is usually private counsel who send us these requests because the law in the area is unclear and they want a definitive statement of the law for their client.

Our Plan sets up a process designed to get you the advice you need as quickly as possible and to ensure that supervisory staff are aware of your needs. We will be tracking our compliance with the standards and will be surveying requesters for suggestions on improvements to the process. I would welcome your feedback as well. If you have any questions or comments, I can be reached at (202) 906-6251, FAX (202) 906-7606, or Internet "carolyn.buck@ots.treas.gov."

Attachment

The OTS recognizes that the long-term soundness of thrift institutions depends in part on their ability to respond to rapid changes in the market. The OTS opinion process provides a way for thrifts to obtain timely guidance regarding new business ideas and developments. Our goal is to enable thrifts to compete effectively and safely in the rapidly changing market for financial services.

When issuing opinions, however, the OTS must also be mindful of its statutory duty to ensure that federal law is implemented in a manner that promotes safety and soundness and the best practices of thrift institutions in the United States. Interpretations issued by the OTS have precedential value for all institutions.

## FOLLOW-UP AND MEASUREMENT

The OTS will monitor its tracking system for opinion projects for compliance with the Customer Service standards. In addition, over the next twelve months the OTS will mail a survey to the inquirer after the close of each significant written or oral request for interpretive advice to obtain suggestions for further improving the opinion process.

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## OFFICE of THRIFT SUPERVISION



## Customer Service Plan Interpretive Opinions

January 1996

## CHIEF EXECUTIVE OFFICERS:

*I am pleased to announce another in a series of OTS Customer Service Plans. This Plan, which establishes standards for OTS replies to requests for interpretive advice and legal opinions from regulated institutions and their counsel, was developed in response to President Clinton's directive that all federal agencies create and publish customer service standards for their key areas of operation.*

*The OTS is genuinely committed to providing superior regulatory services to the thrift industry. We welcome your comments and suggestions for further improvement.*

Sincerely,

  
Jonathan L. Fiechter  
Acting Director

## Interpretive Opinions INTRODUCTION

Providing interpretive guidance to thrift institutions is one of the most important functions performed by the OTS. Not every issue can be anticipated in regulations and policy statements. During a typical year, the OTS receives over fifty written requests for interpretive guidance and hundreds of telephone inquiries.

Given the importance of its interpretive function, the OTS surveyed institutions that have recently requested guidance from the OTS. A number of institutions indicated that they are uncertain of the procedures followed by the OTS in responding to requests for guidance. Other institutions expressed frustration at the time it takes to obtain a response. To address these concerns, the OTS is instituting a more flexible approach to providing interpretive advice.

### STEPS IN THE PROCESS

#### **Step 1: Consult Existing Precedent.**

Before contacting the OTS for interpretive guidance, institutions and their counsel are urged to consult relevant precedent as reflected in applicable statutes, regulations, court cases, and OTS opinions. Well-prepared inquiries will enhance our ability to respond efficiently.

OTS opinions are available via CD ROM subscription services, through on-line computer services, and, to a limited extent, through loose leaf services. In addition, on a quarterly basis, the OTS will issue CEO letters summarizing significant legal opinions and giving each opinion's PubliFax document number. These opinions can be obtained via facsimile by dialing the OTS PubliFax Line, (202) 906-5660.

#### **Step 2: Oral Consultation.**

If after consulting existing precedent an institution decides that it needs guidance from the OTS, the institution should contact the OTS by telephone — before any written submission is prepared. Questions can often be resolved by contacting the OTS regional personnel who examine and supervise the institution. In addition, the Chief Counsel's office has designated experts in each key regulatory area. You may call (202) 906-6947 for assistance. We have found that most interpretive questions can be resolved without written requests and replies.

When advice is given via telephone, relevant OTS regional personnel are apprised of the advice as necessary to ensure consistent treatment at the regional level. For this reason, inquirers must disclose the identity of their institution when seeking guidance.

#### **Step 3: Written Request and Advice.**

Oral advice given by OTS staff does not represent an official agency position due to its informal and undocumented nature. Thus, occasionally an institution, in consultation with OTS staff, may conclude that an inquiry requires a written reply. In these instances, institutions will be asked to submit a written request that fully describes the issues to be addressed (and any prior communications with OTS on the subject) and provides a suggested answer and supporting legal analysis.

To expedite responses, the OTS will divide written requests into two categories. Inquiries that raise major issues of law or policy will receive a full, formal interpretive response in no more than 90 days. All other inquiries will receive a "short form" reply, briefly stating the issue and OTS's conclusion, in no more than 60 days.

In order to conserve resources and help keep OTS assessments low, the OTS ordinarily will not provide substantive written responses to questions that: (a) have already been answered by regulation, statute, court cases, or prior agency opinions (including former Federal Home Loan Bank Board opinions); (b) do not raise a significant issue of law or policy; (c) do not provide a suggested answer or supporting legal analysis; (d) are the subject of an examination, enforcement action

or litigation involving the OTS; (e) do not identify the entity or person on whose behalf the inquiry is being made; or (f) concern hypothetical or vaguely defined transactions or activities.

### CUSTOMER SERVICE STANDARDS

When responding to requests for interpretive guidance, the OTS will strive to meet the following standards.

- ◆ Within 20 days of receipt of a written request, the OTS will issue an acknowledgement letter that confirms that a response will be provided (or indicates why not) and states the name and telephone number of an OTS contact.
- ◆ Short form replies will be issued within 60 days of receipt by the OTS. Other replies will be issued within 90 days.
- ◆ OTS's replies will be clear and understandable. Supporting reasons will always be given for the conclusions reached.
- ◆ OTS staff will acknowledge telephone calls as promptly as possible, but in no event later than one business day after receipt.