



Office of Thrift Supervision
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SUBJECT: Authority Of Federal Savings Associations To
Provide Postal Services

I. Introduction and Summary of Conclusions

This responds to the Central Region's inquiry submitted on behalf of [REDACTED] the "Association"), concerning whether federal savings associations may offer postal services at their retail offices in the same manner as national banks pursuant to the incidental powers doctrine.

Given the number of questions we have received regarding incidental powers over the past several months, we have taken this opportunity to conduct a thorough review of recent case law and other precedent regarding incidental powers. Based on this review, we conclude that federal savings associations may provide the same postal services as are authorized for national banks, subject to the restrictions noted below.

II. Background

National banks are authorized by the regulations of the Office of the Comptroller of the Currency ("OCC") to operate "postal substations" on banking premises and to receive income from

such operations.¹ Postal substations must be operated in accordance with rules and regulations of the U.S. Postal Service and the books and records of the postal substation must be kept separate from the records of other banking operations and are subject to inspection by the United States Postal Service.² The services that may be performed at a national bank postal substation include "meter stamping of letters and packages . . . , the sale of related insurance,"³ and the sale of stamps, including commemorative stamps and stamp collecting kits.⁴ Beyond this, OCC regulations provide that a national bank is permitted to "advertise, develop, and extend the services of [its] substation for the purpose of attracting customers to the bank."⁵ Although this authorization appears somewhat open-ended, practical limits on the scope of permissible activities can be derived from the Postal Service regulations.

The term "postal substation," as used in the OCC regulations, predates enactment of the Postal Reorganization Act of 1970, P.L. 91-375, and no longer appears in Postal Service regulations. Instead, Postal Service regulations now authorize the establishment of "contract stations." These are postal stations operated by independent contractors (i.e., not the federal government) that are authorized to "transact registry and money order business, sell postage supplies, and accept matter for mailing."⁶ These are the provisions of the Postal Service regulations pursuant to which national banks can now obtain authorization to operate what the OCC regulations refer to as postal substations.

Thus, when the OCC's regulations are overlaid with the Postal Service regulations, the scope of permissible postal services that a national bank may perform appears to be limited to: (i) selling stamps and other postal supplies; (ii) accepting matter for mailing (including metered mail); (iii) selling parcel insurance as agent for the Postal Service; (iv) accepting registered mail; and (v) issuing money orders. For purposes of the remainder of this memorandum, we will assume that this is the scope of activities under review. Since federal savings associations have independent authorization to issue money orders, we will focus on the first four of the above listed activities. Our conclusions are limited to these activities.

1. 12 C.F.R. § 7.7482 (1993).
2. Id.
3. Id.
4. OCC Op. Letter (Shockey), December 1975.
5. 12 C.F.R. § 7.7482.
6. 39 C.F.R. § 241.2 (1993).

Because these activities are not among those expressly granted to federal savings associations by statute, our analysis will focus on the scope of the incidental powers of federal savings associations.

III. Discussion

A. Review of Precedent

The OTS and the former Federal Home Loan Bank Board ("FHLBB") have long recognized that federal savings associations possess "incidental" powers, i.e., powers that are incident to the express powers of federal savings associations as set forth in the Home Owners' Loan Act ("HOLA").

The incidental powers doctrine is derived from a long line of Supreme Court cases involving national banks. In these cases, the Supreme Court has considered the proper scope of the incidental powers of national banks. The principles that emerged from these cases have subsequently been applied to all federal financial institutions, including federal savings associations.

In attempting to determine what activities are properly incident to the business of banking, the Supreme Court has used a variety of flexible criteria, including:

(1) Whether the activity is similar to the types of activities permitted by the banking statutes and is not expressly prohibited under the banking statutes, Wyman v. Wallace, 201 U.S. 230, 243 (1906) (banks have power to borrow money), or is not "so disconnected with the banking business as to make it in violation of" the banking statutes. Miller v. King, 223 U.S. 505, 511 (1912) (banks have power to collect judgment on behalf of depositors).

(2) Whether the activity furthers the statutory purposes for which banks were created (as evidenced in the relevant statutes or their legislative history) or is a "generally adopted method" of banks or an activity in which banks have traditionally engaged.

7. E.g., OTS Op. Chief Counsel, June 24, 1991 (savings associations have power to establish and acquire operating subsidiaries); FHLBB Op. by Quillian, January 13, 1986 (savings associations have power to establish finance subsidiaries); and FHLBB Op. by Samuel, October 21, 1983 (savings associations have power to issue mortgage-backed securities).

8. E.g., Ass'n of Data Processing v. Federal Home Loan Bank Board, 568 F.2d 478, 484-86 (5th Cir. 1977) (Federal Home Loan Banks); American Bankers Ass'n v. Connell, 447 F. Supp. 296, 298 (D.D.C. 1978), cert. denied, 444 U.S. 920 (1979) (federal credit unions); and FHLBB Op. G.C., Aug. 11, 1981, FHLBB Op. G.C. July 29, 1981, and 49 Fed. Reg. 29,357, 29,358 (July 20, 1984) (federal savings associations).

Colorado Nat'l Bank v. Bedford, 310 U.S. 41, 48-50 (1939) (banks have power to conduct safe deposit business).

(3) Whether the activity in question "has grown out of the business needs of the country," Merchants' Nat'l Bank v. The State Nat'l Bank, 77 U.S. 604, 648 (1870) (banks have power to certify checks), or would "promote the convenience of [the bank's] business" for itself or for its customers. Clement Nat'l Bank v. Vermont, 231 U.S. 120, 140-41 (1913) (banks have power to pay taxes on behalf of depositors).

(4) Whether the activity is usual and useful to the bank, or is expected of the bank in performing its functions in the current competitive climate. Franklin Nat'l Bank v. New York, 347 U.S. 373, 377 (1954) (banks have power to advertise bank services); First Nat'l Bank v. Hartford, 273 U.S. 548, 559-60 (1927) (banks have power to sell and deal in mortgages and other evidences of debt).

In more recent times, a number of federal court decisions have applied the Supreme Court's incidental powers doctrine to various activities of interest to modern financial institutions. The first, and most frequently cited, in this modern line of cases is Arnold Tours v. Camp, 472 F.2d 427 (1st Cir. 1972). There, the court ruled that an activity will be deemed to fall within the incidental powers doctrine if it is:

convenient or useful in connection with the performance of one of the [institution's] established activities pursuant to its express powers under [statute]. If this connection between an incidental activity and an express power does not exist, the activity is not authorized as an incidental power.

Id. at 432. In Arnold Tours, the court found that a national bank was not authorized to engage in a full-scale travel business since this was not incident to its express powers.

Although the language quoted above suggests that an activity must directly facilitate the performance of another expressly authorized activity to be permissible, other aspects of the Arnold Tours decision implied, consistent with prior Supreme Court decisions, that the standard is actually more flexible. Thus, for example, at one point in its opinion, the court suggested that its decision turned, at least in part, on whether the travel business "primarily involves the performance of financial transactions pertaining to money or substitutes thereof." Id. at 430. Elsewhere, the court suggested that another relevant consideration was whether full-scale travel services were "agency and

9. Cf. Independent Bankers Ass'n of America v. Heimann, 613 F.2d 1164, 1170 (D.C. Cir. 1979), cert. denied, 449 U.S. 823 (1980) (banks have power to sell credit life insurance).

informational services that are normally of a kind which are germane to the financial operations of the bank." Id. at 433. The court also found that certain travel related activities such as rendering banking services for travelers, the sale of travelers checks and foreign currency, the making of travel loans, the issuance of letters of credit and providing travel information gratis were permissible because such services fall within the "normal traditional range of monetary activities of national banks." Id. at 430.

Notwithstanding these suggestions of a more flexible standard, the stricter "direct nexus" standard set out in the block quotation above was, for a period of time after Arnold Tours was decided, regarded by many as an authoritative, concise, and encompassing statement of the incidental powers doctrine. Beginning with M & M Leasing Corp. v. Seattle First Nat'l Bank, 563 F.2d 1377 (9th Cir. 1977), cert. denied, 436 U.S. 956 (1978), however, the courts and federal regulators began moving back toward the more flexible approach suggested by prior Supreme Court decisions.

In M & M Leasing, the court found that motor vehicle leasing is similar to lending on personal security and serves the same purpose as lending. Accordingly, the court concluded that leasing activities are part of the "business of banking" and noted that banks engaged in this activity are acting essentially as a "financing agency." Id. at 1380. Although the court stated that it agreed with the approach employed in Arnold Tours, the court went on to implicitly criticize that decision by emphasizing that the banking statutes "did not freeze the practices of national banks in their nineteenth century forms" and that the scope of a bank's incidental powers "must be construed so as to permit the use of new ways of conducting the very old business of banking." Id. at 1382.

In another recent case, the federal Court of Appeals for the District of Columbia Circuit was even more direct in its criticism of any test that requires a specific nexus to express powers. American Insurance Association v. Clarke, 865 F.2d 278, 281 (D.C. Cir. 1988) ("AMBAC"). In AMBAC, the court stated that exclusive use of a direct nexus test to identify all incidental powers would constitute "a narrow and artificially rigid view of both the business of banking and the [banking statutes]." Id. in evaluating the permissibility of the provision of municipal bond insurance, the court concluded that the "essence of AMBAC's service" was the provision of credit and that such services were "sufficiently similar to credit services routinely performed by banks [i.e. stand by letter of credit]." Id. at 281-82.

Recent OCC opinions have utilized an approach similar to that of the District of Columbia Circuit in AMBAC. For example, in OCC Letter No. 494 (December 20, 1989), 1989 OCC Ltr. LEXIS 99 (Re: Security Pacific Futures, Inc.), the Comptroller considered whether national banks are authorized to provide execution, clearing and

advisory services for customer transactions in agriculture, petroleum and metals futures. The Comptroller criticized the tendency of some legal analysts to rely exclusively on the Arnold Tours direct nexus test. The Comptroller noted that the Supreme Court cases cited by the Arnold Tours court relied on much broader interpretations of the incidental powers of national banks. Id. at 11. The Comptroller described the variety of tests invoked by these earlier decisions and concluded that:

recent cases use the same types of arguments that have always been used to determine if an activity is part of the business of banking. If the activity is similar to an express power, relates to an express power, is or is like something banks have traditionally done, or is found to be a financial activity, it is permissible.

Id. at 12 (citations omitted). In this Letter, the Comptroller concluded that brokerage of agricultural futures and options was an incidental power of national banks because:

[s]uch brokerage is a financial activity associated with banks' many other activities with financial instruments, manifesting banks' role as intermediaries in the economy, and related to other financial services offered by banks. . . . [T]hese instruments and their market are financial in nature and purpose.

Id. at 7.

In another recent letter, the OCC raised no objection to a bank's proposal to act as a principal in commodity price index swaps with its customers. OCC No Object Letter 87-5 (July 20, 1987), reprinted in, [Transfer Binder 1988-1989] Fed. Banking L. Rep. (CCH) ¶ 84,034. There the OCC emphasized that "[t]he adaptability of the national bank system will become increasingly important as advances in technology and telecommunications accelerate the rate of change." The OCC found that commodity price index swaps involve "a modern concept of banking as funds intermediation."

Finally, although some recent OTS and FHLBB opinions have tended to gravitate toward a simple Arnold Tours direct nexus test, the more flexible, multifaceted approach reflected in the foregoing precedent is nevertheless evident in many thrift regulatory opinions. For example, in an important 1981 opinion, the FHLBB concluded that federal thrifts have incidental authority to issue signature guarantees. FHLBB Op. G.C., Aug. 11, 1981. In reaching this conclusion, the FHLBB noted that this activity is: (i) similar to other activities authorized for federal thrifts; (ii) consistent with the statutory mission assigned to thrifts; and (iii) related to the financial intermediary role all thrifts are meant to play. These factors are very similar to those cited in OCC Letter No. 494 (described above). In fact, the FHLBB opinion specifically

acknowledged that it was looking to national bank precedent for guidance.

In another significant incidental powers opinion, the FHLBB concluded that federal thrifts may issue cashiers checks drawn against themselves. FHLBB Op. G.C., July 29, 1981. In support of this conclusion, the FHLBB noted that cashiers checks had long been associated with the business of banking, that thrifts would be at a significant competitive disadvantage vis a vis banks if they could not issue cashiers checks, that permitting thrifts to issue cashiers checks would be consistent with Congress' desire to make thrifts more effective providers of consumer financial services, and that the proper scope of permissible incidental activities must be allowed to evolve with the economy.¹⁰

B. Analysis of Precedent

As is apparent from the foregoing, no single all-encompassing incidental powers "test" has emerged from the cases. Instead, the courts and regulatory authorities have considered a broad mix of factors; each of these factors may be weighed differently depending upon the nature of the activity under review. These factors can be summarized in the form of four questions:

1. Is the activity consistent with the purpose and function Congress envisioned for the type of financial institution involved, as evidenced in the relevant banking statutes and their legislative history? Bedford, 310 U.S. 41; Arnold Tours, 472 F.2d 427; OCC Letter No. 494; and FHLBB Ops. G.C., Aug. 11, 1981 and July 29, 1981.
2. Does the activity facilitate the conduct of an activity expressly authorized by Congress, or is the activity similar to an activity that Congress has expressly authorized? Miller, 223 U.S. 505; Wyman, 201 U.S. 230; AMBAC, 565 F.2d 278; M & M Leasing, 563 F.2d 1377; Arnold Tours, 472 F.2d 427; OCC Letter No. 494; and FHLBB Op. G.C., Aug. 11, 1981.

10. For similar analyses, see FHLBB Op. by Williams, May 4, 1988, and FHLBB Op. by Raiden, Feb. 7, 1985. "In light of the changing marketplace in which federal associations must compete and the corresponding need for such associations to be able to offer access to new services in order to retain their customer base, it is our opinion that a federal association, as an incident to both the purposes for which it was chartered and its expressly authorized activities, may contract directly [with a company that will offer discount brokerage services at the retail offices of the institution].").

3. Does the activity relate to the financial intermediary role that all federal financial institutions were intended to play? Merchants Nat'l Bank, 77 U.S. 604; M & M Leasing, 553 F.2d 1377; Arnold Tours, 472 F.2d 427; OCC Letter No. 494; OCC Letter 87-5; and FHLBB Op. G.C., Aug. 11, 1981.
4. Is the activity necessary to enable the financial institution to remain competitive and relevant in the modern economy, and thereby permit the institution to fulfill the purposes for which it was created? Franklin Nat'l Bank, 347 U.S. 373; First Nat'l Bank, 273 U.S. 548; Clement Nat'l Bank, 231 U.S. 41; Merchants Nat'l Bank, 77 U.S. 604; M & M Leasing, 553 F.2d 1377; OCC Letter 87-5; FHLBB Op. by Williams, May 4, 1988; FHLBB Op. by Raiden, Feb. 7, 1985; and FHLBB Op. G.C., July 29, 1981.

As noted above, the relative weight given to the foregoing factors may vary depending upon the type of activity in question. It is not critical that each question be answered in the affirmative in order to conclude that an activity is permissible. In some instances, it may be proper to give greater weight to one factor or another. For example, when an activity can be shown to be closely related to an expressly authorized activity, it may be less important to wrestle with the nuances of legislative history. In other instances, the level of competitive disadvantage that would result from prohibiting an activity may be so severe that a decisionmaker may reasonably give more weight to that factor.

In the discussion that follows, we will review the postal service activities at issue in this memorandum pursuant to each of the foregoing questions. As will be seen, the answers to three of these four questions support the conclusion that providing postal services falls within the incidental powers of a federal savings association.

11. It is important to note that in every case the OTS retains the authority to restrict or prohibit activities on grounds of safety and soundness. E.g., 12 U.S.C. § 1463(a)(1) (Supp. IV 1992). Thus, even an activity that meets each of the foregoing tests could be restricted or prohibited on grounds of safety and soundness. For this reason, institutions should always consult with the OTS before commencing an incidental activity if: (i) there is no prior opinion of the OTS or former FHLBB authorizing the activity, or (ii) an authorizing opinion has been issued but the opinion indicates that case-by-case safety and soundness review will nevertheless be required.

C. Application of Precedent

1. The Purpose and Function of Federal Thrifts as Manifest by the Legislative History of the HOLA

When the HOLA was originally enacted in 1933, Congress indicated that the principal purpose of federal savings associations was to provide savings accounts and home financing for ordinary consumers.¹² This relatively narrow view of the role of federal savings associations remained largely unchanged until the early 1980's when Congress enacted two major pieces of banking reform legislation -- the Depository Institutions Deregulation and Monetary Control Act of 1980 ("DIDMCA")¹³ and the Garn-St Germain Depository Institutions Act of 1982 ("Garn-St Germain").¹⁴ Recognizing that strict restrictions on the activities of federal savings associations were placing them at a significant, and possibly fatal, competitive disadvantage with banks and other financial services providers,¹⁵ Congress enacted broad statutory changes designed to allow federal savings associations to become "convenient one-stop family financial centers."¹⁶

Amendments enacted by Congress authorized federal savings associations to, inter alia, provide the following consumer oriented services for the first time: checking accounts, NOW accounts, consumer loans, credit card loans, second-mortgage loans, construction loans, and trust services. The amendments also enhanced the ability of federal savings associations to meet the needs of their business customers by granting or expanding investment authority for commercial loans, bankers acceptances, commercial paper, nonresidential real estate loans, and acquisition and development loans.

Congress believed that the amendments to the HOLA enacted in the DIDMCA and Garn-St Germain would give federal savings associations "flexibility . . . to improve the range of services [that] thrift institutions may provide to their customers."¹⁷ Congress admonished the FHLBB to implement these amendments in a manner that "enhance[s] the ability of thrifts to offer complete

12. See e.g. 12 U.S.C. § 1464(a) (1976); and S. Rep. No. 368, 96th Cong., 1st Sess. 12 (1979).

13. P.L. 96-221, 94 Stat. 132 (1980).

14. P.L. 97-320, 96 Stat. 1469 (1982).

15. S. Rep. No. 368, 96th Cong., 1st Sess. 12-13 (1979); and S. Rep. No. 536, 97th Cong., 1st Sess. 13-15 (1982).

16. S. Rep. No. 368, 96th Cong., 1st Sess. 13 (1979).

17. S. Rep. No. 536, 97th Cong., 1st Sess. 87 (1982).

financial services to the consumer."¹⁸ Although recent amendments to the HOLA enacted in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") and the Housing and Community Development Act of 1992 ("HCDA") have added a number of safety and soundness restrictions to the HOLA, FIRREA, FDICIA and HCDA have not materially altered the scope of powers and general purposes articulated for federal thrifts in DIDMCA and Garn-St Germain. Indeed, the authority of federal thrifts to act as retail-level financial services providers was further expanded by FDICIA provisions enhancing federal savings associations' consumer lending authority and FIRREA provisions permitting federal thrifts to offer demand deposit accounts to commercial customers on the same basis as to individuals and non-profit corporations.¹⁹

Thus, the practical effect of the statutory changes made by Congress since 1980 has been to endorse the evolving role of federal thrifts as consumer-oriented financial institutions and, after an initial liberalization, to impose increasingly tight safeguards on federal thrifts' large-scale commercial lending activities. Congress has demonstrated an intent that modern federal savings associations should serve as consumer oriented financial intermediaries, dedicated to meeting the financial needs of ordinary consumers "across the board" in "one-stop."²⁰

Offering postal services is a basic non-depository financial-related service that would be consistent with this statutory mission.

The ability of thrift customers to purchase stamps at and to send regular mail and registered mail from their savings association will facilitate the performance of personal financial business, such as: paying bills, mailing financial documents, making deposits, filing credit card or loan applications, making loan payments, paying taxes and transmitting loan documentation. Many of these activities are directly related to a customer's banking business. For example, a customer may need to deposit funds in his/her checking account before mailing payments for bills, or a customer may need to acquire stamps in order to make deposits by mail. For reasons such as this, national banks have long been authorized to offer postal services. Thus, providing postal services would be consistent with the role Congress envisioned for federal thrifts, i.e., to serve as "one-stop" consumer-oriented financial institutions.

18. S. Rep. No. 368, 96th Cong., 1st Sess. 13 (1979).

19. Pub. L. 102-242, 105 Stat. 2236, § 441 (1991); and Pub. L. 101-73, 103 Stat. 282, § 301 (1989).

20. S. Rep. No. 368, 96th Cong., 1st Sess. 13 (1979).

The fact that some postal services purchased from a savings association will inevitably facilitate the conduct of non-financial business does not alter this conclusion. It would be impractical to restrict financial institutions to only those postal service transactions that directly and exclusively facilitate the conduct of personal financial business. We are satisfied that a substantial percentage of the postal services purchased from federal thrifts is likely to be related to the conduct of personal financial business. This provides a sufficient nexus to conclude that this activity genuinely facilitates the conduct of the personal financial business of customers of federal thrifts.

2. Similarity to Express Powers

Another test that the courts often employ when considering whether an activity falls within the incidental powers of a financial institution is whether the activity is similar to or facilitates the conduct of one of the institution's express powers.

Section 12 of the HOLA expressly authorizes federal savings associations to advertise, subject to regulations promulgated by the Director of the OTS.²¹ Both the OTS and the OCC have recognized that providing community services can be an effective way of advertising. For example, the OTS has opined that federal savings associations have the authority to make charitable contributions incident to their express statutory authority to advertise because such activities produce "community benefits" that result in "publicity favorable to the association."²²

The OCC has used a similar rationale to conclude that national banks may engage in a variety of activities designed to attract business and create goodwill. These activities include operating a postal substation, income tax preparation assistance, payroll disbursements and acting as an agent in the distribution of auto registration renewals.²³

In Corbett v. Devon Bank, 199 N.E.2d 521, 12 Ill. App. 3d 559 (1973), the Court of Appeals of Illinois found that national and state banks have authority to distribute auto registration renewals and charge a service fee. The court found that in performing this function:

banks are assisting in the performance of a public service, a large part of which is intimately connected with the ordinary and traditional banking function of

21. 12 U.S.C. § 1468a (Supp. IV 1992).

22. See OTS Op. Chief Counsel, November 12, 1992; FHLBB Op. by Smith, June 9, 1987; FHLBB Supervisory Op. by Summers, November 5, 1985; and FHLBB Manual Op. B 57 (July 1, 1941).

23. See J. Cranmore, J. McHugh, Banking Law § 26.06 (1993).

collecting and remitting funds for other parties. Furthermore, banks perform this function . . . to attract persons to become familiar with their premises in the hope of expanding their goodwill and thereby their banking business.²⁴

The court continued "[t]he activity here involved is in effect akin to advertising, which is no more than an effort to increase goodwill and public acceptance; and in this manner, to augment the usual business of the bank."²⁵

Likewise, a thrift providing postal services to customers is performing a public service by making stamps and mail services available at convenient locations. In performing this function, a thrift would collect money from customers and remit it to the United States Postal Service. A thrift would perform this service to attract customers, increase goodwill and thereby expand its banking business. Thus, we conclude that operation of a postal substation can further a savings association's advertising program. As noted above, advertising is expressly authorized by statute.

This is not to say that every activity that may draw customers into a thrift and enhance customer convenience (e.g., selling gasoline or milk) is incident to a thrift's express authority to advertise. What makes postal services an appropriate advertising vehicle for thrifts is that such services facilitate financial transactions and the amount of resources required to provide these services is rather small. In other words, this is a service that is truly incidental to the ordinary business of a thrift, both in terms of its scope and the nature of the activity.

3. Fulfilling the Role of Financial Intermediary

Another test commonly employed to determine whether an activity is properly incident to the business of a financial institution is the financial intermediary test. As noted above, the courts and the OCC have recognized that, when reduced to their essence, financial institutions serve as financial intermediaries for the public. In other words, the public looks to financial institutions to facilitate the flow of money and credit among different parts of the economy. As the Supreme Court stated in Auten v. United States Nat'l Bank, 174 U.S. 125, 143 (1899), "[t]he very object of banking is to aid the operation of the laws of commerce by serving as a channel for carrying money from place to place, as the rise and fall of supply and demand require." Although thrifts are not banks, they too are obviously intended to serve as financial intermediaries, especially at the consumer level. Activities that accomplish this function may, therefore,

24. Id. at 529.

25. Id.

also properly be said to fall within the scope of their incidental powers.

Although the provision of postal services is related to and supports the provision of financial intermediary services by savings associations (for the reasons explained in Parts III.A. and III.B. above), the provision of postal services does not, in and of itself, constitute funds intermediation. Thus, the application of this test to postal services does not advance our analysis. However, as noted above, an activity need not necessarily meet each of the four tests in order to be authorized. Rather, a cumulative assessment must be made after applying each of the four tests.

4. Adaptation to Modern Economic Circumstances

When assessing whether an activity properly falls within the scope of a financial institution's incidental powers, the courts frequently consider whether institutions of the type in question need to engage in the activity in order to keep pace with changes in the modern economy. When employing this test, the courts often consider whether the activity in question is one that consumers have come to expect financial institutions to perform as a matter of convenience and/or whether financial institutions need to offer the services in question in order to keep pace with their competitors.

As noted above, the OCC has long permitted national banks to provide postal services. Many customers have become accustomed to the convenience of taking care of their postal needs at a bank. The ability of thrifts to offer postal services would help them remain competitive with national banks in the provision of customer services.

D. Conclusions

As the foregoing analysis indicates, three of the four standard factors commonly considered in incidental powers analysis support the conclusion that federal savings associations may provide postal services. In our view, the cumulative force of these three factors justifies the conclusion that federal savings associations may provide postal services.

The scope of permissible services will be limited to those that are authorized for national banks, as described in Part II above. A federal savings association offering these services must observe the appropriate rules and regulations of the United States Postal Service. The books and records of the postal operation must be kept separate from the records of other operations of the

- savings association and will be subject to inspection both by the
OTS and the United States Postal Service.

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