**Mutual Alert**

OCC Adopts Final Covered Association Rule With Improvements Based On AMB Comments

Last week the OCC adopted Part 101 to its rules to implement the EGRRCPA provisions that provide Federal Associations the power to elect National Bank investment and lending authority. A copy of the OCC release is attached. This was the final step in implementing the more expansive investment powers authorized by the Statute and a necessary step for those associations that are attempting to source more profitable investments and loans but are bumping up against QTL limitations. AMB submitted extensive comments to the OCC on its September 2018 proposed rule. We are pleased to report that most of our comments have been incorporated into the final rule. Among the various AMB recommendations, adopted by the OCC, were continuation of grandfathered converted savings bank powers, continued investment authority for covered associations to invest in public welfare and community development investments, adoption of permissive powers language and the preservation of the corporate existence of service corporations with investments authorized for a national bank.

Perhaps AMB's most significant recommendation was the elimination of the definition of an "eligible association" as defined by 12 CFR 5.3(g) from the language that originally appeared in the proposed regulation. That definition would have made ineligible for covered status any Federal Association that had a CAMEL rating of less than 2, outstanding enforcement actions or a CRA rating of less than satisfactory. While this would have denied the expanded powers election to associations for reasons that may have had little to do with their capability to deploy the new powers, it would have been more problematic for the reasons stated in our comment letter for associations already exercising covered association powers but subsequently downgraded or made the subject of an enforcement agreement or order. In short, the threat of a supervisory reversal, no matter how presently remote, would call into question a covered associations future reliability as a lender or employer. We are very pleased that the OCC has eliminated the problematic language in its final rule. As we said in our comment letter the OCC has more than ample authority to restrain an association from exercising powers it believes are being exercised in an unsafe and unsound manner. A CAMEL downgrade for reasons not directly related to exercise of the new powers should not cause a blanket disqualification of a covered association from using those new investments powers.

Unfortunately, one of the negative consequences of the statutory expansion of investment and lending powers for Federal Associations, is that it leaves state chartered associations at a competitive disadvantage. Not only must they compete with commercial banks and savings banks for higher yielding loans and investments but now must face Federal Associations as competitors for these new investments while being restricted by QTL . We suspect this disadvantage will encourage the dwindling number of state associations to seek conversion to

another charter. We continue to urge the Conference of State Bank Supervisors to seek legislation to level the playing field and preserve the dual savings association system.