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Department of Consumer & Industry Services
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December 18, 1998

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Dear #####:

Your letter of October 7, 1998, to Peggy Bryson asked "whether the Financial Institutions Bureau . . . would consider the Bank [an out-of-state national bank having no office or service center located in Michigan, but which will extend to Michigan residents loans and lines of credit secured by junior mortgages] to be a credit granting institution (CGI) subject to Michigan's Mortgage "Anti-Redlining Act"" (hereinafter, Act). MCL §445.1601 et seq.

You suggest that to determine whether the Bank is a CGI one should consider the Act's substantive provisions, and you conclude that "the Michigan legislature only intended for the Act to apply to national banks with a main office, branch office or service center in Michigan making mortgage loans to Michigan residents."

The Act defines CGI as:

“ . . .a state or nationally chartered bank, a state or federally chartered savings and loan association, a state or federally chartered credit union, Michigan state housing development authority, or a business entity making or purchasing mortgage loans, which has a main office, branch office, or service center doing such business within the state of Michigan.” (MCL §445.1601(c))

It is clear that a national bank that does not have "a main office, branch office, or service center doing such business within the state of Michigan" does not meet the definition of credit granting institution and would not be subject to the Act. It is less clear, in light of the way the mortgage lending business is conducted in Michigan today, what constitutes a "service center" doing such business within the state of Michigan, a term which is not defined elsewhere in the Act.

It is helpful to an analysis of the question you raise to consider the nature of the mortgage lending business in the late 1970s. Residential mortgage lending was very much a local activity when the Act was enacted. Interstate branching by financial institutions,

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origination of loans through brokers, interstate loans by mail and lending via the Internet are relatively recent developments in the evolution of the residential lending business.

At the time of the law's enactment, banks and savings and loan associations operated branch offices and credit unions operated "service centers." The Michigan Credit Union Act (CU Act) defined the term "service center" as:

“ . . . a place of business other than the home office of a credit union where such business of the credit union as has been authorized by the board of directors may be transacted except the keeping of the principal books and records required for examination purposes.” MCL §490.1a

Service centers thus served credit unions in roughly the same capacity that branches served for banks and savings and loan associations.¹ Rules promulgated under the Act reinforce this concept of service centers being the functional equivalent of branch offices.² In addition, by exempting certain types of branches and service centers, the rule makes it clear that the act's provisions are not applicable to branch locations and other facilities where lending business is not routinely conducted.

Today, substantial business is conducted through mortgage brokers, through the mail, or via the Internet. A mortgage broker located in Michigan may serve as the functional equivalent of a branch or service center of a lender.

As you point out, several of the substantive provisions of the act clearly contemplate that mortgages will be transacted in a business setting that enables the borrower to a) view posted notices of rights to inquire about obtaining a loan, to apply for a loan, and to receive a written response to an application (MCL §445.1605); and b) to obtain at the lender's office a document describing that lender's loan approval criteria (MCL §445.1602(10)).

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¹ It is important to note, as well, that in 1977, the year of enactment of the Act, the state did not license nondepository mortgage companies. At that time, these companies were few in number and largely were engaged in originating loans. The growth of the mortgage broker industry is a relatively recent phenomenon, so that it is unlikely that "service center" would have been contemplated to include mortgage brokers.

² "Rule 1. (1) As used in these rules and the act:

. . .
(c) "Branch office" or "Service center" does not mean an electronic funds transfer facility or a branch or service center that is exclusively a drive-in branch or drive-in service center."

. . . R 445.1001(1)(c)

The drafters also clearly intended that a lender subject to the act would be in a position to be aware of local factors in the neighborhood of the collateral residence that might mitigate the effects of disinvestment (MCL §445.1603(1)(b)) and that the lender would have some physical location in the community in which to make contact with potential borrowers and at which to post or make available the information required under the Act. (MCL §445.1602(10), §445.1605)

One of the principles of statutory construction is that “The language of a statute should be given a reasonable construction, considering its purpose and the object to be accomplished. An act must be read in its entirety and due consideration must be given to all sections in order to produce an harmonious and consistent enactment as a whole. Statutes are to be construed to avoid unreasonable or absurd consequences.” *People v. Keeth*, 193 Mich App 555, 563-564 (1992) (quoting *Reisman v Wayne State Regents*, 188 Mich App 526, 536 (1991)).

Posting a notice of Michigan borrower rights in the Florida office of a bank that makes loans in Michigan benefits neither the Michigan borrowers nor the Florida customers of the bank. Likewise, display of documentation on criteria for approval of a Michigan loan at the Florida premises of the bank will not benefit Michigan residents, who are unlikely to travel to Florida to obtain the information. A Florida lender that makes or acquires a few loans from various locations in Michigan is unlikely to be aware of local community and neighborhood organizations, or local government and other programs designed to mitigate the effect of physical decline in a given Michigan neighborhood. An Internet-based lender from another state does not have a wall on which to post its notice—and it cannot control its site so as to preclude Michigan residents' access. A loan broker in Michigan that, as an independent contractor, represents many originators, each with a range of different loan products and different approval criteria, is unlikely to be able to produce a meaningful consolidated statement of criteria for approval or denial of a mortgage loan by any of the represented organizations. If a broker makes available a lending criteria document from each of a hundred lenders, the practical utility of the document is lost in the overwhelming numbers.

Applying the Act to an out-of-state lender with no physical presence in Michigan would preclude a reasonable construction of the Act in its entirety. Application of the Act's requirements to out-of-state mortgage lenders who do business in Michigan through mortgage brokers that are independent contractors for multiple lenders provides an absurd result. On the other hand, a Michigan mortgage broker whose activities are controlled by an out-of-state lender functions as a branch office or service center to provide Michigan residents access to the services of that lender and a location where required notices can be posted and loan criteria documents obtained.

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In conclusion, therefore, a national bank that makes mortgage loans to Michigan residents, but which does not maintain a main office, branch office or service center in Michigan, is not a credit granting institution under the Act. For purposes of the Act, branch office or service center would include a Michigan-based mortgage broker under the control of an out-of-state mortgage lender.

Questions regarding this determination may be directed to Russell LaCoursier of my staff at (517)373-8674.

Sincerely,

/ ss /

Patrick M. McQueen
Commissioner

cc: Peggy Bryson
Gary Mielock

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