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STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE REGULATION
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
ANDREW S. LEVIN, ACTING DIRECTOR

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COMMISSIONER

February 22, 2011

Mr. Allan D. Daniels, Chairman
Mortgage Industry Advisory Board
43902 Woodward Avenue, Suite 20
Bloomfield Hills, Michigan 48302

**Via U.S. First Class Mail and
E-Mail to Allan@DrDanielsAndSon.com**

RE: Interpretation of Section 41 of the Mortgage Loan Originator Licensing Act

Dear Chairman Daniels,

This letter is in response to the Mortgage Industry Advisory Board's (the "Board") communication dated November 16, 2010, submitted pursuant to Section 33(3) of the Mortgage Brokers, Lenders, and Servicers Licensing Act.¹ In its communication, the Board identified an issue of concern to the residential mortgage industry related to the application of Section 41 of the Mortgage Loan Originator Licensing Act² to mortgage brokers, mortgage lenders, and mortgage servicers. In particular, the Board requests clarification as to whether or not the Office of Financial and Insurance Regulation ("OFIR") interprets Section 41 of the Mortgage Loan Originator Licensing Act³ to require an employing mortgage broker, mortgage lender, and mortgage servicer to clearly show its unique identifier on all residential mortgage loan application forms, solicitations, or advertisements. The Board suggests that the answer to this question should be in the negative. For the reasons that follow, OFIR agrees.

The Mortgage Loan Originator Licensing Act (the "Act")⁴ was signed into law on July 31, 2009, for the purpose of licensing and regulating mortgage loan originators. To further this purpose, the Act prohibits an individual from acting as a mortgage loan originator without first obtaining a license under the Act and requires each mortgage loan originator to register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry ("NMLS").⁵ The NMLS was established in response to the enactment of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008⁶ and designed to facilitate the electronic tracking of loan originators and uniform identification of, and public access to, the employment

¹ M.C.L. 445.1683(3).

² M.C.L. 493.171.

³ *Id.*

⁴ 2009 P.A. 75, as amended, M.C.L. 493.131 *et seq.*

⁵ M.C.L. 493.135(1).

⁶ 12 U.S.C. § 5101 *et seq.*

history of and the publicly adjudicated disciplinary and enforcement actions against loan originators.⁷

The Act defines “mortgage loan originator” as an “individual who originates residential mortgage loans.”⁸ The Act defines “individual” as a “natural person.”⁹ “Originate” is defined as doing “any of the following for compensation or gain, or in the expectation of compensation or gain, in connection with a residential mortgage loan:

- (i) Take a residential mortgage loan application.
- (ii) Offer or negotiate terms of a residential mortgage loan.”

Thus, the Act sets forth a licensing scheme that requires a natural person who, for, or in the expectation of, compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan to first obtain a license and register with NMLS and maintain a unique identifier.

Section 41 of the Act¹⁰ requires that the unique identifier be shown on all forms and marketing materials. Specifically, Section 41 of the Act¹¹ directs that:

The unique identifier of any person originating a residential mortgage loan in this state shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or websites, and any other documents, as established by rule or order of the commissioner.

The use of the defined term “person”, rather than “individual”, in Section 41 creates the ambiguity that the Board is concerned about. Namely, because the definition of “person” under the Act¹² includes legal business entities as well as individuals, Section 41 could be interpreted to include employer mortgage brokers, mortgage lenders, mortgage servicers, and other entities. However, OFIR has not interpreted Section 41 to apply to business entities. While there are certain provisions of the Act that directly or indirectly apply to an employer of a mortgage loan originator¹³, the primary purpose and intent of the Act is to require that individual mortgage loan originators be licensed and obtain and maintain a unique identifier from NMLS. It is clear when reading the Act as a whole and taking into consideration the legislative intent of the Act, that the legislature intended the act of mortgage loan origination to be the exclusive domain of the individual natural person. Further, if it was the intent of the legislature to require that employer mortgage brokers, mortgage lenders, and mortgage servicers place their NMLS unique identifier on mortgage loan application forms, solicitations, or advertisements, it would have done so under the Mortgage Brokers, Lenders, and Servicers Licensing Act, Secondary Mortgage Loan Act,

⁷ See, § 5102(12)(A) of the Federal Secure and Fair Enforcement for Mortgage Licensing, 12 U.S.C. § 5102(12)(A).

⁸ See, M.C.L. 493.133(l).

⁹ M.C.L. 493.133(h).

¹⁰ M.C.L. 493.171.

¹¹ *Id.* (Emphasis added.)

¹² M.C.L. 493.133(q).

¹³ See, e.g., M.C.L. 493.137(2), 493.141(3), 493.143(3), 493.147(3), 493.159, and 493.167.

Mr. Allan D. Daniels, Chairman
Mortgage Industry Advisory Board
February 22, 2011
Page 3

and Consumer Financial Services Act. Accordingly, it is the interpretation of OFIR that the context of "person" as used in Section 41 is limited to an individual, natural person.

While it is the interpretation of OFIR that the Act does not require employing mortgage brokers, mortgage lenders, and mortgage servicers to include its unique identifier on loan application forms, solicitations, or advertisements, employing mortgage brokers, mortgage lenders, and mortgage servicers are not prohibited from doing so.

This interpretation is predicated on the law and facts as they exist today. Any change in the facts or applicable law may change our interpretation. If you have any questions concerning this letter, please contact me at (517) 335-3369.

Sincerely,

A handwritten signature in black ink, appearing to be "Ken Ross", with a long horizontal stroke extending to the right.

Ken Ross
Commissioner