



State of Michigan
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Department of Consumer & Industry Services
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Office of Financial and Insurance Services
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February 28, 2002

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Dear XXXXXX:

I am writing in reply to your February 20 inquiry regarding the authority of a bank subsidiary to receive the interest income on consumer credit in which it has purchased a 100 percent participation from its parent bank.

The scenario you set forth in your letter is that a bank has a wholly owned subsidiary. The bank makes consumer loans at interest rates which, under Michigan usury laws, the subsidiary could not charge if it extended the same type of credit, as the subsidiary is not a "regulated lender" for purposes of the Michigan Credit Reform Act. The bank transfers 100% participations in these loans to the subsidiary, but remains the creditor of record, services the credits, and retains the right to enforce the obligations. You note that there will be no privity of contract between the subsidiary and the obligors on the loans. You conclude that "the subsidiary will be entitled to share in interest payments as the purchaser of a loan participation without being subject to the 7% interest rate ceiling set forth in MCL 438.31." You close by requesting confirmation that the Office of Financial and Insurance Services concurs with your conclusion.

Michigan's Banking Code (Code) permits state-chartered banks to collect interest and charges on extensions of credit as permitted by Michigan and United States laws.¹ Michigan's Credit Reform Act authorizes regulated lenders, which it defines as including state-chartered banks, to "charge, collect, and receive any rate of interest or finance charge for an extension of credit not to exceed 25% per annum."² The Code grants state-chartered banks authority to enter into contracts.³

Under the scenario you set forth, the parent bank enters into a consumer loan agreement at a rate of interest authorized by Michigan law. As creditor of record, it collects the payments on the loan, as authorized by Michigan law. The bank enters into a separate agreement, under its statutory authority to contract, with its wholly-owned subsidiary to transfer participations to the subsidiary and to convey to the latter monies in an amount equivalent to all or part of the interest collected on a participated credit. I am unaware of

¹ MCL 487.14201(1)

² MCL 445.1854(1)

³ MCL 487.14101(1)(a)

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any provision of Michigan's usury laws that would preclude a creditor in this situation from complying with its agreement to transfer revenues from participated credits to the participant.

Sincerely,

/ss/

Ronald C. Jones, Jr.
Chief Deputy Commissioner