

**STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**

Before the Director of the Department of Insurance and Financial Services

In the matter of:

**NCP Partners, LLC
205 Sugar Camp Circle
Dayton, OH 45409**

Enforcement Case No. 14-12017

**Stephen McAllister
CEO**

Applicant

**NOTICE OF DENIAL OF APPLICATION FOR A REGULATORY LOAN LICENSE
AND
NOTICE OF OPPORTUNITY FOR JUDICIAL REVIEW**

On or about November 5, 2013, NCP Partners, LLC (Applicant) filed with the Department of Insurance and Financial Services (DIFS)¹ an application for licensure pursuant to Section 2 of the Regulatory Loan Act (RLA), 1939 PA 21, as amended, MCL 493.1 *et seq.* Applicant indicated in its application materials that it intends to make loans by using a credit services organization (CSO) organized and operating under the Credit Services Protection Act (CSPA), 1994 PA 160, as amended, MCL 445.1821 *et seq.* The CSO will act as a broker for Applicant's loans, accepting consumer applications and arranging loans on Applicant's behalf.

Section 4(1) of the RLA, MCL 493.4(1), establishes the standards that the Director must apply when determining whether to license an RLA applicant:

Upon the filing of the application, the payment of the fees, and the approval of the bond, the commissioner shall investigate the applicant and if he or she finds that the financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the community and to

¹ Pursuant to Executive Order 2013-1, effective March 18, 2013, the Office of Financial and Insurance Regulation (OFIR) is now known as the Department of Insurance and Financial Services, or DIFS. All authority, powers, duties, functions and responsibilities of the former Commissioner of OFIR were transferred to the Director of DIFS (Director).

warrant belief that the business will be operated lawfully, honestly, fairly, and efficiently within the purposes of this act and that the applicant has a net worth in the amounts required under section 2, the commissioner shall issue a license to the applicant to conduct business at the location or locations specified in the application.

Section 4(2) of the RLA, MCL 493.4(2), further prohibits the Director from licensing an applicant if she finds that these or other requirements of the RLA have not been met:

If the commissioner finds that the applicant fails to meet the requirements of this act, he or she shall not issue a license and shall notify the applicant of the denial and return to the applicant the bond and fee paid by the applicant, retaining the investigation fee to cover the costs of investigating the application.

Accordingly, the RLA requires that after investigation, the Director will exercise her authority and discretion by determining, *inter alia*, whether an applicant's business activities in the licensed area will be conducted lawfully, honestly, fairly, and efficiently within the purposes of the RLA. The RLA requires the Director to make an affirmative finding to this effect before issuing the applicant a license, and absent such a positive finding the RLA prohibits the Director from issuing a license.

DIFS staff has conducted an investigation of Applicant's financial responsibility, experience, character, and general fitness, and has also reviewed the details of Applicant's proposed business plan and activities. DIFS staff has reported the results of its investigation to Rhonda J. Fossitt, the Senior Deputy Director of DIFS (Senior Deputy Director), who reviewed staff's investigation results, discussed them with DIFS staff, and possesses the delegated authority to issue this Notice of Denial.² Based upon the application materials submitted by Applicant and the information developed in the course of staff's investigation, neither DIFS staff nor the Senior Deputy Director believe that Applicant's business will be operated lawfully, honestly, fairly, and efficiently within the purposes of the RLA. Consequently, its application

² See MCL 445.2003 (E.R.O. No. 2000-2), Section V.E.

for a license under the RLA must be denied. The documents and evidence supporting this finding, together with the reasons for denying Applicant's RLA license application, are discussed in more detail below.

I.

APPLICANT'S BUSINESS PLAN AND OTHER APPLICATION MATERIALS DESCRIBE ITS INTENTION TO MAKE LOANS TO MICHIGAN CONSUMERS BY USING A CSO, WHICH WILL ACT AS A BROKER FOR APPLICANT'S LOANS AND CHARGE CONSIDERATION FOR THESE LOANS IN ADDITION TO THE MAXIMUM INTEREST AND FEES THAT APPLICANT CHARGES UNDER THE RLA.

Applicant has stated³ that it intends to market its loan product to Michigan consumers through the means of a CSO broker organized and operating under the CSPA. According to its application materials, Applicant intends to enter into a Credit Services Agreement with the CSO, which would act as the broker for Applicant's loans and work together with Applicant to process consumer loan applications and "arrange" Applicant's loans. Applicant intends to conduct its business through one exclusive CSO broker. Applicant stated that if additional CSO broker relationships are established, a separate NCP legal entity will be created and will apply for a separate regulatory loan license³ to conduct business through that additional CSO broker.

According to Applicant's proposed business plan, a consumer will enter the CSO's business location seeking a short-term loan. The CSO will require the consumer to complete and

³ Since the date that Applicant submitted its original application on November 5, 2013, there have been several communications between DIFS staff and Applicant's representatives regarding the details of Applicant's proposed business plan. During the course of these communications, many components of Applicant's business plan have changed or evolved, including but not limited to: (a) how frequently and under what circumstances security in the form of a consumer's automobile title would be required for Applicant's loans; (b) whether the CSO fee would be automatically financed and included in the principal amount of Applicant's loans; and (c) whether Applicant will use a licensed deferred presentment service provider or an affiliate thereof as its CSO broker. Beyond these discrepancies, sufficient reasons exist to deny Applicant's license application based on Applicant's use of a CSO broker that will charge consideration for Applicant's loans that combined with Applicant's interest and fees will exceed the RLA's limits. However, further development of these ill-defined business plan components could potentially implicate other laws and provide additional bases for denying Applicant's RLA license application. For example, Applicant's proposed use of a "title loan" whereby Applicant would retain a consumer's automobile title

sign an application for credit services and provide appropriate identification. The CSO will then decide, based on its own criteria and in its sole discretion, whether to approve the consumer's application and provide credit services to the consumer. Although not clearly stated in the application materials or necessary for this denial notice, when the CSO denies a consumer's credit services application it appears that the process ends and the CSO will not forward any of that consumer's information to Applicant.

If the CSO approves a consumer's application for credit services, the CSO will provide broker services to Applicant which are limited contractually to: (a) assisting the consumer in the loan application process; (b) gathering information about the loan collateral (vehicle and vehicle title), if any (see footnote 3); and (c) issuing a loan payment guaranty in favor of Applicant on behalf of the consumer for each loan that Applicant makes.⁴ Upon approval of a consumer's credit services application, the CSO will provide the consumer a Credit Services Agreement (between the consumer and the CSO, as distinguished from the agreement bearing the same name between the CSO and Applicant) and a Disclosure Statement. The CSO will then electronically transmit to Applicant, on behalf of the consumer, all consumer information required by Applicant to process the consumer's application for a loan from Applicant. Based on the consumer information and guaranty forwarded by the CSO, Applicant will process the loan application and decide whether to make the loan, in what amount, and for what term.

If the CSO is unwilling to guaranty the loan being requested by the consumer, the CSO will issue a Notice of Adverse Action to the consumer and will not collect its CSO fee. Likewise, the CSO will not collect its fee if Applicant does not approve and make the applied-for

for an indefinite period, as opposed to promptly recording a lien and returning the consumer's title, is a practice never previously approved by DIFS.

⁴ The application states that the loan guaranty provided by the CSO to Applicant constitutes "credit enhancement" for consumers who purchase the CSO's services and who satisfy the CSO's credit criteria for providing a guaranty.

loan. Accordingly, the CSO earning and collecting any fee for its services is entirely dependent on whether the loan is made by Applicant.

In its most recent application materials, Applicant has stated that it is the consumer's choice whether the CSO fee is financed as part of the loan made by Applicant. However, other application materials indicate that the CSO fee will be financed automatically and added to the principal amount of the consumer's loan. For example, Applicant's Program Guidelines include the CSO fee in the "Itemization of Amount Financed" for each loan, while Applicant's Federal Truth-in-Lending Disclosures and Promissory Note submitted as part of its application are pre-printed with the CSO fee included as part of the amount financed. If the CSO fee is financed as part of Applicant's loan, the fee paid by the consumer to the CSO broker is not a separate, independent transaction, but rather is included in the consumer's loan amount and collected by Applicant.

If Applicant approves a consumer's loan, Applicant will deliver the loan proceeds to the consumer in the manner elected by the consumer, which may be by ACH to the consumer's bank account or debit card or by issuance of Applicant's check. The CSO may cash the consumer's loan proceeds check, but will not charge a fee for doing so.

As indicated, each loan the CSO brokers will be secured by a guaranty issued by the CSO in Applicant's favor. If a consumer defaults on Applicant's loan (defined as failing to make a payment when due, making a false statement in the loan application, or otherwise breaching the loan agreement or cancelling the CSO contract), Applicant will impose the guaranty and the CSO then becomes responsible for collecting on the defaulted loan. Upon the consumer's default, the CSO will purchase the defaulted loan from Applicant for the applicable Loan Guaranty Amount, which includes all principal, interest, and accrued fees due under the loan. Following such purchase, all amounts paid by a consumer with respect to the purchased loan

shall be for the account of the CSO. This guaranty inherent in every loan the CSO brokers for Applicant insulates Applicant from any consumer default risk on its loans. Moreover, the CSO guaranty (along with the contract(s) between Applicant/the CSO and the ability to finance and include the CSO fee in the principal amount of Applicant's loan) evidences the relationship and concerted action between the parties with respect to each CSO-brokered loan, as well as the CSO's direct involvement with the making of each such loan.

According to the application, Applicant intends to offer short-term consumer loans with an interest rate not to exceed 25%, which is the statutory limit. The loans will be scheduled to be repaid by consumers in payments of principal and interest. Applicant's Program Guidelines state that the CSO may not accept payments on behalf of Applicant. All payments must be paid through a third party service if the consumer wishes to pay at the CSO location. Applicant will charge a loan processing fee not to exceed the lesser of 5% of the principal amount of the loan or \$300, which is also the statutory limit. Applicant will also charge a late payment fee not to exceed the greater of \$15.00 or 5% of the amount of the installment payment due—again the statutory limit. Although Applicant states that it does not intend to charge an NSF fee at this time, it reserves the right to do so at a later date (the statutory limit is \$25.00). The CSO fee is not disclosed in the application materials, and notably the CSPA provides no limit on the fees that a CSO may charge for the services included within that act.

Applicant's business plan initially stated that in addition to generating loans through its contracted CSO broker using the process described above, Applicant also intended to "offer loans directly to consumers by mail or over the telephone" but provided no further details. In subsequent submissions responding to DIFS staff's requests, Applicant stated that it "will make loans directly to consumers in Michigan" and planned to market those loans via newspaper and Internet advertisement. However, Applicant acknowledged that the software and advertising

materials necessary for any direct lending program were still under development and that “[o]ther options for initiating direct loans are also being considered.” Applicant further acknowledged that neither it nor any of its affiliates currently provide any loan products directly to consumers in the other states in which they operate. Moreover, under the business plan submitted by Applicant, Applicant does not intend to have any physical presence in the State of Michigan; rather, it intends to work primarily through a CSO to broker and promote its loans using the CSO’s existing “brick and mortar” business location. Similarly, the contracts submitted as part of Applicant’s application all refer to and include the use of a CSO broker.

Thus, even though Applicant suggests that a consumer may seek a loan from it directly, it has offered very limited information on how consumers may, on their own, apply for a loan without going through Applicant’s contracted CSO. Because Applicant’s direct loan program lacks definition and remains under development by Applicant’s own admission, this aspect of its application is deemed insufficient, and any consideration of such a program would require a separate, detailed application describing a consumer-ready program. More importantly, and as explained further below, because Applicant’s business model necessarily includes the use of a CSO broker for at least some (if not all) of its loans, this tarnishes and renders unlawful its entire business plan and compels the denial of its application—regardless of whether or not Applicant also offers a direct loan product.⁵

⁵ The combination of a direct loan product with the CSO-brokered loans (and Applicant’s CSO model generally) may also raise issues under the CSPA, including but not limited to Section 3(c), MCL 445.1823(c), which prohibits a CSO from “charg[ing] a buyer . . . solely for referral to a retail seller who will or may extend credit to the buyer if the credit that is or may be extended to the buyer is substantially the same as that available to the general public.” Even if Applicant offers readily available direct loans to consumers rather than exclusively through its contracted CSO broker, the co-existence of these two methods of obtaining loans/credit from Applicant creates an issue as to whether the CSO loan (with its additional fees) is “substantially the same” as the loan that Applicant would offer directly to consumers (without any CSO fee). If the loans/credit are “substantially the same,” the CSO is adding no real value to the process and its fee would constitute a charge “solely for referral to” Applicant that the CSPA prohibits. The CSPA is regulated and enforced by the Attorney General, so this potential issue is not an express basis for DIFS’ denial of the application. Moreover, the application materials do not clearly establish how Applicant’s direct lending program would operate, much less how the credit terms for Applicant’s direct loan v.

II.

THE CONSIDERATION CHARGED BY THE CSO FOR BROKERING APPLICANT'S LOAN, COMBINED WITH APPLICANT CHARGING THE MAXIMUM FEES FOR THAT LOAN PERMITTED UNDER THE RLA, CAUSES THE TOTAL FEES CHARGED FOR THE LOAN TO EXCEED THE RLA'S FEE LIMITATIONS AND IS THEREFORE UNLAWFUL.

The Michigan Legislature has enacted a comprehensive regulatory scheme that governs the permissible interest rates, fees, and other terms that can be imposed for various types of loans made to Michigan residents. Under Section 1 of the Interest Rates Act, 1966 PA 326, as amended, MCL 438.31 *et seq.*, a person may charge an interest rate of up to 7% per annum on a written loan agreement without obtaining a license. Under Section 2(1) of the RLA, MCL 493.2(1), "a person shall not engage in the business of making loans of money . . . and charge, contract for, or receive on the loan a greater rate of interest, discount, or consideration than the lender would be permitted by law to charge if the lender were not a licensee" under the RLA (i.e., as permitted under the Interest Rates Act), and without first obtaining a license from the Director. As explained further below, the RLA (in combination with the Credit Reform Act (CRA), 1995 PA 162, as amended, MCL 445.1851 *et seq.*) additionally prohibits any regulatory loan from charging interest that exceeds the rate of 25% per annum, while limiting the processing fee for any closed-end regulatory loan to the lesser of \$300.00 or 5% of the principal amount of the loan.⁶ Furthermore, the Deferred Presentment Service Transactions Act (DPSTA), 2005 PA 244, MCL 487.2121 *et seq.*, regulates certain small-dollar, short-term transactions in which the licensee agrees to hold a consumer's check for a stated period of time before

CSO-brokered loan might differ, if at all. However, if pursued, Applicant's CSO business model generally and/or as combined with a fully-developed direct loan program could raise issues under the CSPA that the Attorney General may also wish to consider.

⁶ MCL 493.13(4) authorizes a total loan processing fee of up to \$250.00, which amount the Director must adjust every 2 years to reflect the percentage change in the U.S. consumer price index rounded to the nearest hundred dollars. The CPI-adjusted loan processing fee limit is now \$300.00. See DIFS Bulletin 2014-01-CF.

negotiating the check to re-pay the transaction. Under the DPSTA, the Legislature imposed numerous restrictions on deferred presentment service providers, including requiring a license from the Director, limiting the maximum transaction amount to \$600 and maximum transaction term to 31 days, and prescribing limits on the service fees and other fees a licensee may charge for a transaction.⁷

Taken together, these statutes evidence the Legislature's intention that Michigan consumers cannot be charged unlimited interest rates and fees in connection with obtaining a loan or deferred presentment transaction.⁸ Any loan or transaction that is subject to one of these acts must comply with the interest rate, fee, and other restrictions contained in that act. The loans that Applicant seeks licensure to make are undisputedly subject to the RLA, and are therefore subject to all such restrictions contained in that act.

As indicated in Section I, Applicant proposes to charge the maximum loan processing fee permitted under the RLA for each loan it makes, while Applicant's CSO broker would additionally charge an unspecified fee (that has no limits under the CSPA) for processing and securing the same loan or extension of credit from Applicant. However, the RLA specifically limits the fees that an RLA lender and any other person involved with an RLA loan transaction

⁷ Although Applicant's business model does not appear to fall within the DPSTA, nor is reliance on the DPSTA necessary to deny Applicant's RLA license application, its application materials: (a) indicate that Applicant's CSO broker may be a DPSTA licensee or an affiliate thereof; (b) include references to "single payment loans"; and (c) provide that the consumer's payments may be collected through automated electronic or ACH debits to the consumer's bank account. Upon further review and development of these facts, they could implicate the DPSTA and provide additional (although again, unnecessary) bases for denying Applicant's RLA license application.

⁸ Because these statutes share the common purpose of limiting the interest and fees that a Michigan consumer may be charged for a loan or deferred presentment transaction, they are *in pari materia*. *Apsey v Memorial Hosp*, 477 Mich 120, 129 n 4 (2007). "It is elementary that statutes *in pari materia* are to be taken together in ascertaining the intention of the legislature, and that courts will regard all statutes upon the same general subject matter as part of 1 system." *Robinson v City of Lansing*, 486 Mich 1, 8 n 4 (2010)(quoting *Dearborn Twp Clerk v Jones*, 335 Mich 658, 662 (1953)). Accordingly, the RLA's provisions should be interpreted in connection with these other statutes to accomplish the Legislature's goal of creating a comprehensive, regulated consumer lending system with specified interest rate and fee limitations.

may charge, contract for, or receive for the loan. Because Applicant's CSO business model would violate these RLA fee limitations, its license application must be denied.

“The goal of statutory interpretation is to give effect to the intent of the Legislature.”
Radina v Wieland Sales, Inc, 297 Mich App 369, 373 (2012)(quoting *Township of Homer v. Billboards By Johnson, Inc*, 256 Mich App 154, 157 (2003)). An act must be construed “as a whole to harmonize its provisions and carry out the purpose of the Legislature.” *Macomb County Prosecuting Attorney v Murphy*, 464 Mich 149, 159 (2001).

Several sections of the RLA provide that the act's fee limitations apply to each loan transaction, and these limitations cannot be evaded by other non-licensed parties participating in the loan transaction and charging additional fees. As indicated previously, Section 2(1) of the RLA, MCL 493.2(1), provides that “*a person shall not engage in the business of making loans of money . . . and charge, contract for, or receive on the loan a greater rate of interest, discount, or consideration than the lender would be permitted by law to charge if the lender were not a licensee*” under the RLA. (emphasis added). Under this statute, a person⁹ cannot engage in the business of making loans of money (which would include the CSO's business of brokering loans for Applicant) and charge, contract for, or receive greater consideration on “the loan” (i.e., the loan transaction that the CSO participated in making) than the lender (i.e., Applicant) would be allowed by law to charge if it were not licensed under the RLA (i.e., the rates permitted under the Interest Rates Act). Standing alone, this statute evidences the Legislature's intent that the RLA's interest rate and fee limitations apply to each loan transaction and to any person that participates in the making of that loan.

⁹ The RLA defines “person” broadly to mean “an individual, partnership, association, corporation, limited liability company, or other legal entity.”

Section 13(4) of the RLA, MCL 493.13(4), contains the loan processing fee limitation that Applicant’s proposed CSO business model directly violates. Under this section, “a loan processing fee not to exceed 5% of the principal, up to \$250.00 [now CPI-adjusted to \$300.00], *may be charged for each closed-end loan made.*” (emphasis added). Significantly, the statute does not provide that “the lender may only charge” the prescribed fee or use similar language. Rather, it provides broadly that for each closed-end loan transaction, the total fee that “may be charged” by anyone for activities relating to processing that loan may not exceed the statutory limit. To make the absolute nature of the RLA’s per-transaction fee limitations even clearer, Section 13(4) goes on to state that “[n]o other amount shall be directly or indirectly charged, contracted for, or received” for an RLA loan transaction—again by anyone, not just the lender—except for certain specified governmental filing fees. Because Applicant’s CSO business model proposes Applicant charging the maximum processing fee allowed under Section 13(4) for each closed-end loan it makes, plus its CSO broker charging additional, unspecified fees for processing the same loan, it violates the plain terms of Section 13(4) and Applicant’s license application must be denied.

Applicant’s CSO business model is additionally prohibited by Sections 18(1) and 18(2) of the RLA, MCL 493.18(1) and (2), which prohibit “a person” (again, not just an RLA lender) from employing any device or subterfuge to charge greater consideration for an RLA loan transaction than is authorized by the act:

(1) A person, except as authorized by this act, shall not directly or indirectly charge, contract for, or receive an interest, discount, or consideration greater than the lender would be permitted by law to charge if the lender were not licensed under this act upon the loan, use, or forbearance of money, goods, or things in action.

(2) The prohibition specified in subsection (1) applies to a person who or which, by any device, subterfuge, or pretense charges, contracts for, or receives greater interest, consideration, or charges than authorized by this act for the loan, use, or

forbearance of money, goods, or things in action or for the loan, use, or sale of credit.

Under Section 18(1), a person (which includes the CSO broker) cannot directly or indirectly charge, contract for, or receive any consideration (which includes the CSO fee) that is greater than the lender (i.e., Applicant) would be allowed by law to charge if it were not licensed under the RLA upon the loan of money. Again, this statute evidences the Legislature's intent that the RLA's interest rate and fee limitations apply broadly to any person who, even if by "indirect" means such as the Applicant's CSO business model, attempts to charge greater consideration than the RLA permits "upon" an RLA loan transaction. Similarly, Section 18(2) directly prohibits Applicant's CSO model by stating that Section 18(1) also applies to a person who by any device, subterfuge, or pretense charges, contracts for, or receives greater consideration or charges than the RLA authorizes "for" an RLA loan transaction or extension of credit. Because the CSO fee is wholly dependent on Applicant making the loan and is not payable if the loan is not made, it is clearly predicated "upon" and is directly "for" Applicant's RLA loans. Sections 18(1) and 18(2) of the RLA therefore unequivocally close the door on Applicant's proposal to avoid the RLA's interest and/or fee limitations, compelling the denial of its license application.

In sum, Applicant and its CSO broker may not join forces to accomplish indirectly what the RLA prohibits them from doing directly, including exceeding the types and amounts of fees that the RLA allows a consumer to be charged for a regulatory loan transaction. To conclude otherwise by allowing Applicant to charge the maximum fees permitted by the RLA and its CSO broker to charge any additional amounts it desires would elevate form over substance. This interpretation would also render the RLA's fee limitations meaningless, contrary to the well-settled rule requiring every word, phrase, and clause in a statute to be given effect, while

avoiding an interpretation that would render any part of the statute surplusage or nugatory.

Koontz v Ameritech Services, Inc, 466 Mich 304, 312 (2002).

A loan made under the RLA, whether through an RLA licensee working alone or through an RLA licensee acting together with other unlicensed parties,¹⁰ may not charge, contract for, or receive in total fees that exceed the RLA's limits. Because the CSO business model presented by Applicant would charge combined fees exceeding these limits, its application must be denied.

III.

ALTERNATIVELY, THE CONSIDERATION CHARGED BY THE CSO FOR BROKERING APPLICANT'S LOAN, COMBINED WITH APPLICANT CHARGING THE MAXIMUM INTEREST RATE FOR THAT LOAN PERMITTED UNDER THE RLA AND CRA, CAUSES THE TOTAL INTEREST CHARGED FOR THE LOAN TO EXCEED THE INTEREST RATE LIMITATION CONTAINED IN THESE STATUTES AND IS THEREFORE UNLAWFUL.

Similar to the preceding section's analysis that the CSO fee is unauthorized under the RLA because it causes the total fees charged on Applicant's loans to exceed the RLA's fee limitations, the CSO fee can alternatively be viewed as a form of additional interest on Applicant's loans, which causes the loans to violate the RLA's and CRA's interest rate limitations. Stated differently, when combining the 25% maximum interest rate charged by Applicant for its loans with the CSO's unspecified fee (that has no limits under the CSPA), and viewing the CSO fee not as a fee or charge under the RLA but as additional interest, Applicant's CSO business plan also violates Section 13(1) of the RLA, which states in part:

A licensee may lend money and may contract for, compute, and receive interest charges on the loan at a rate that does not exceed the rate permitted by the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864.

¹⁰ That Applicant and its CSO broker are acting together to make Applicant's loans is evidenced by, among other things: (a) the existence of a Credit Services Agreement between them defining all of their rights and obligations with respect to Applicant's loans; (b) the CSO's guaranty in favor of Applicant for loans made to CSO-approved consumers; and (c) the ability to add the CSO fee to the principal balance of Applicant's loans. These are not indicative of truly independent, unrelated parties.

Section 4(1) of the CRA, MCL 445.1854(1), in turn provides:

(1) Except as provided in subsection (2), a regulated lender may charge, collect, and receive any rate of interest or finance charge for an extension of credit not to exceed 25% per annum.

Viewing the CSO fee as additional interest, the proposed business plan of Applicant further represents a device or subterfuge to charge greater interest for an RLA loan transaction than the act permits, which violates Section 18(1) and 18(2) of the RLA, MCL 493.18(1) and (2), as explained in Section II above. This proposed conduct by Applicant is evidence that its business cannot be operated lawfully, honestly, fairly, and efficiently within the purposes of the Regulatory Loan Act, which prohibits Applicant's licensure under Sections 4(1) and 4(2) of the RLA, MCL 493.4(1) and 493.4(2).

IV.

APPLICANT HAS NOT DEMONSTRATED COMPLIANCE WITH THE REGULATORY LOAN ACT AS REQUIRED FOR LICENSURE.

Applicant's license application materials do not establish that it will operate in compliance with the laws that regulate the regulatory loan industry. Moreover, Applicant has not demonstrated that it will adhere to the standards and requirements of the requested license.

DIFS staff and the Senior Deputy Director have considered this application very thoroughly. Based on the foregoing, and in the considered judgment of the Senior Deputy Director, it is not possible to make an affirmative determination that warrants belief that Applicant's business will be operated lawfully, honestly, fairly, and efficiently within the purposes of the RLA. To the contrary, the results of staff's investigation reflect adversely on Applicant's fitness to be licensed. Consequently, being unable to affirmatively determine that Applicant, if licensed, would comply with the law and command the confidence of the public,

and given the existence of circumstances that warrant denial of the application, Applicant's license application must be denied.¹¹

Therefore, having given careful and deliberate consideration to this matter, Applicant's application for licensure under the RLA is DENIED. Because the application has been denied, Applicant is without authority to transact any business in the State of Michigan requiring licensure under the RLA.

NOTICE OF OPPORTUNITY FOR JUDICIAL REVIEW

Section 4 of the RLA, MCL 493.4, provides in part:

(2) If the commissioner finds that Applicant fails to meet the requirements of this act, he or she shall not issue a license and shall notify Applicant of the denial and return to Applicant the bond and fee paid by Applicant, retaining the investigation fee to cover the costs of investigating the application.

* * *

(4) If the application is denied, the commissioner shall within 20 days from the date of denial file with the office of financial and insurance services a written transcript of the decision and findings containing the evidence and the reasons supporting the denial and shall serve upon Applicant a copy of the filing.

Section 24 of the RLA, MCL 493.24, provides:

Any applicant under section 4 of this act or any licensee, being dissatisfied with any rule, regulation, order, demand, ruling, or finding (hereinafter in this section referred to as an order) whatsoever, made by the commissioner under and by virtue of the provisions of this act, may, within 30 days from the issuance of such order and the giving of notice thereof as required herein, commence an action in the circuit court in chancery for the county of Ingham, or in the chancery court of the county in which is located the place of business of such licensee or applicant concerning which such rule, regulation, order, demand, ruling or finding was made, against the commissioner as defendant to vacate and set aside such order on

¹¹ The reasons supporting this Notice denying Applicant's RLA license application are consistent with the positions and arguments contained in DIFS Bulletin 2006-06-CF (the 2006 Bulletin). Although the Senior Deputy Director is relying on the statutes cited in this Notice and not the 2006 Bulletin, the 2006 Bulletin placed Applicant on notice that DIFS had statutory concerns with the CSO business model and may not approve its application. In addition, the 2006 Bulletin evidences DIFS' longstanding interpretation that the RLA prohibits Applicant's proposed CSO business model. "[T]he construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration and ought not to be overruled without cogent reasons." *In re Complaint of Rovas*, 482 Mich 90, 103 (2008)(quoting *Boyer-Campbell v Fry*, 271 Mich 282, 296-297 (1935)).

the ground that the same is unlawful or unreasonable or not correct as to the facts, or that any regulation or practice fixed in such order is unlawful or unreasonable. In such action the trial shall be de novo and the court shall not be bound by any finding of fact or law on the part of the commissioner, and the burden of proof shall be on the commissioner. The same shall proceed, be tried and determined as other chancery suits and appeal therefrom may be taken by any party to the supreme court in the same manner as from other chancery suits. Any party to such suit may introduce original evidence in addition to the transcript of evidence taken before the commissioner. The said circuit court in chancery is hereby given jurisdiction of such suits and empowered to affirm, modify, vacate, or set aside the order of the commissioner in whole or in part and to make such other order or decree as the court shall decide to be proper and in accordance with the facts and the law. In all actions and proceedings in court arising under this section of this act, all process shall be served and the practice and rules of evidence shall be the same as in actions in equity except as otherwise herein provided.

Unless and until Applicant seeks judicial review under MCL 493.24, thereby vesting jurisdiction in the courts, the Director of DIFS specifically retains jurisdiction of this matter to issue such further Order or Orders as she may deem just, necessary or appropriate to assure compliance with the law and protect the public interest.

APPLICABLE LAWS

DIFS asserts that the following provisions of law are applicable to this matter:

Section 2(1) of the RLA, MCL 493.2(1) provides:

Except as otherwise provided under this act, a person shall not engage in the business of making loans of money, credit, goods, or things in action and charge, contract for, or receive on the loan a greater rate of interest, discount, or consideration than the lender would be permitted by law to charge if the lender were not a licensee under this act and without first obtaining a license from the commissioner, or by obtaining a license under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

Section 4 of the RLA, MCL 493.4, states in part:

(1) Upon the filing of the application, the payment of the fees, and the approval of the bond, the commissioner shall investigate the applicant and if he or she finds that the financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business will be operated lawfully, honestly, fairly, and efficiently within the purposes of this act and that the applicant has a net worth in the amounts required under section 2, the commissioner shall issue a license to the

applicant to conduct business at the location or locations specified in the application. The license shall remain in effect until it is surrendered by the licensee or revoked or suspended as provided under this act.

(2) If the commissioner finds that Applicant fails to meet the requirements of this act, he or she shall not issue a license and shall notify Applicant of the denial and return to Applicant the bond and fee paid by Applicant, retaining the investigation fee to cover the costs of investigating the application.

* * *

(4) If the application is denied, the commissioner shall within 20 days from the date of denial file with the office of financial and insurance services a written transcript of the decision and findings containing the evidence and the reasons supporting the denial and shall serve upon Applicant a copy of the filing.

Section 13 of the RLA, MCL 493.13, states in part:

(1) A licensee may lend money and may contract for, compute, and receive interest charges on the loan at a rate that does not exceed the rate permitted by the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864. A loan by a licensee may be 1 of the following:

(a) A closed-end loan.

(b) Open-end credit consisting of direct advances from the licensee or checks issued by the licensee. This subdivision does not apply to open-end credit available through the use of a credit card or charge card.

* * *

(4) In addition to the interest and charges provided for in this act, a loan processing fee not to exceed 5% of the principal, up to \$250.00, may be charged for each closed-end loan made, and may be included in the principal of the loan. The \$250.00 limit on the loan processing fee shall be adjusted every 2 years to reflect the percentage change in the United States consumer price index for the 2 immediately preceding calendar years, rounded to the nearest hundred dollars. As used in this subsection, "United States consumer price index" means the United States consumer price index for all urban consumers in the United States city average, as defined and reported by the United States department of labor, bureau of labor statistics, and after certification by the commissioner. A licensee may require the borrower to pay the late charges permitted by the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864. A licensee shall not induce or permit a person to become obligated, directly or contingently, under more than 1 loan contract not secured by personal property at the same time for the purpose or with the result of obtaining a loan processing fee not otherwise permitted by this section. No other amount shall be directly or indirectly charged, contracted for, or received, except the lawful fees, if any, actually and necessarily paid by the

licensee to a governmental entity for the filing, recording, or releasing of either of the following:

- (a) A financing statement or an instrument securing the loan, or both.
- (b) A record noting or releasing a lien or transferring a certificate of title under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

* * *

(6) A licensee may charge a handling fee for the return of an unpaid and dishonored check, draft, negotiable order, or similar instrument given to the licensee in full or partial repayment of a loan as authorized by the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864.

Section 18 of the RLA, MCL 493.18, states in part:

(1) A person, except as authorized by this act, shall not directly or indirectly charge, contract for, or receive an interest, discount, or consideration greater than the lender would be permitted by law to charge if the lender were not licensed under this act upon the loan, use, or forbearance of money, goods, or things in action.

(2) The prohibition specified in subsection (1) applies to a person who or which, by any device, subterfuge, or pretense charges, contracts for, or receives greater interest, consideration, or charges than authorized by this act for the loan, use, or forbearance of money, goods, or things in action or for the loan, use, or sale of credit.

Section 24 of the RLA, MCL 493.24, provides:

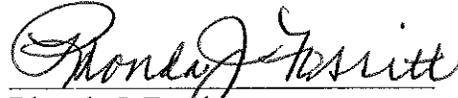
Any applicant under section 4 of this act or any licensee, being dissatisfied with any rule, regulation, order, demand, ruling, or finding (hereinafter in this section referred to as an order) whatsoever, made by the commissioner under and by virtue of the provisions of this act, may, within 30 days from the issuance of such order and the giving of notice thereof as required herein, commence an action in the circuit court in chancery for the county of Ingham, or in the chancery court of the county in which is located the place of business of such licensee or applicant concerning which such rule, regulation, order, demand, ruling or finding was made, against the commissioner as defendant to vacate and set aside such order on the ground that the same is unlawful or unreasonable or not correct as to the facts, or that any regulation or practice fixed in such order is unlawful or unreasonable. In such action the trial shall be de novo and the court shall not be bound by any finding of fact or law on the part of the commissioner, and the burden of proof shall be on the commissioner. The same shall proceed, be tried and determined as other chancery suits and appeal therefrom may be taken by any party to the supreme court in the same manner as from other chancery suits. Any party to such suit may introduce original evidence in addition to the transcript of evidence taken

before the commissioner. The said circuit court in chancery is hereby given jurisdiction of such suits and empowered to affirm, modify, vacate, or set aside the order of the commissioner in whole or in part and to make such other order or decree as the court shall decide to be proper and in accordance with the facts and the law. In all actions and proceedings in court arising under this section of this act, all process shall be served and the practice and rules of evidence shall be the same as in actions in equity except as otherwise herein provided.

Section 4(1) of the CRA, MCL 445.1854(1), provides:

Except as provided in subsection (2), a regulated lender may charge, collect, and receive any rate of interest or finance charge for an extension of credit not to exceed 25% per annum.

Department of Insurance and
Financial Services



Rhonda J. Fossitt
Senior Deputy Director

DATED: 4/17/14