



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
LANSING

ANITA G. FOX
DIRECTOR

Memorandum

DATE: August 15, 2019
TO: Interested Persons
FROM: Anita G. Fox, Director *AGF*
SUBJECT: Rescission of Declaratory Ruling Dated January 1, 2000

The Department of Insurance and Financial Services has recently reviewed the following declaratory ruling and concluded that it should be withdrawn:

- In the matter of: Request by Rodney D. Martin on Behalf of National City Bank for a Declaratory Ruling on the Applicability of the Motor Vehicle Sales Finance Act to Certain Transactions (January 1, 2000) (hereinafter "Declaratory Ruling").

As background: on January 1, 2000, Financial Institutions Bureau (FIB) Acting Commissioner Gary Mielock issued the Declaratory Ruling pursuant to Section 63 of the Administrative Procedures Act of 1969, MCL 24.63. The Declaratory Ruling was issued in response a request posed by National City Bank regarding the applicability of the Motor Vehicle Sales Finance Act (MVSFA), MCL 492.101 *et seq.*, to its proposed program to lend money to Michigan consumers for the purchase of motor vehicles. The Declaratory Ruling concluded that the transactions under the proposed program would constitute "installment sales contracts" under the MVSFA, and would require National City Bank and its agents to be licensed under the MVSFA.

On May 23, 2001, the Office of the Comptroller of the Currency issued Preemption Determination No. 01-10, 66 FR 28593-01, which concluded that federal law preempted the MVSFA as applied to national banks (referred to as "Requesters" in the Preemption Determination). Per the Preemption Determination, requiring national banks to comply with the MVSFA, as FIB did in the 2000 declaratory ruling, "frustrates the Requesters' ability to exercise their lending authority by limiting the Requesters' use of agents, it prohibits the requesters from charging interest rates permitted by their home state as authorized by 12 USC 85, and it seeks to apply a state licensing requirement to national banks, as a precondition to their exercise of powers granted under Federal law."

On October 18, 2002, Office of Financial and Insurance Services (OFIS) Commissioner Frank M. Fitzgerald, relying on the Preemption Determination, issued a letter to Huntington National Bank stating that OFIS would not take action against a MVSFA licensee for originating motor vehicle loans while acting as an agent of a national bank. This letter, as well as the Preemption Determination, effectively superseded the Declaratory Ruling, which is outdated and should be withdrawn.

The Preemption Determination has not been superseded, and it remains the position of the Department of Insurance and Financial Services that loans made by national banks directly to consumers do not require licensure under the MVSFA, and that DIFS will not take action against an MVSFA licensee that originates motor vehicle loans while acting as an agent of a national bank.

Installment sellers licensed under the MVSFA are reminded that no installment sale contract may be sold to any person unless the person is licensed under the provisions of the MVSFA pursuant to Section 15(a) of the MVSFA, MCL 492.115(a).

Any questions regarding this memorandum should be directed to:

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