

June 13, 2001

Re: Applicability of Credit Services Organization Part of Credit Services Act to Licensed Mortgage Brokers

Dear _____ :

This letter responds to your inquiry regarding the position of the Department of Banking (the Department) on whether and the extent to which the credit services organization provisions in the Credit Services Act¹ (CSA) are applicable to mortgage brokers respectively licensed under the Mortgage Bankers and Brokers Act² (MBBA) and Secondary Mortgage Loan Act³ (SMLA).

As you know, the Department does not have enforcement authority over a credit services organization as that term is defined in section 2 of the Credit Services Act.⁴ However, the Department does have regulatory enforcement authority applicable to mortgage brokers licensed by the Department under the MBBA and the SMLA.⁵ Accordingly, the Department finds it appropriate to comment on whether and when activities permissible for credit services organizations under the CSA are so incidental to mortgage broker business as to be part of the authorization for persons licensed as mortgage brokers under the MBBA or SMLA to engage in the first and secondary mortgage loan businesses in this Commonwealth.

Discussion: The definitions relevant to the Department's position stated in this letter include a mortgage broker (also referred to in this letter as first mortgage broker) under the MBBA, a secondary mortgage loan broker under the SMLA, and a credit services organization under the CSA. These definitions are described below for discussion purposes.

¹ 73 P.S. ' 2181 et seq.

² 63 P.S. ' 456.01 et seq.

³ 7 P.S. ' 6601 et seq.

⁴ See 73 P.S. ' ' 2182 (definition of credit services organization), 2190 (violation of Credit Services Act shall be deemed to be a violation of the Unfair Trade Practices and Consumer Protection Law which is enforced by the Pennsylvania Office of Attorney General).

⁵ See 63 P.S. ' 456.10 and 7 P.S. ' 6616.

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Pursuant to section 2 of the MBBA, a mortgage broker⁶ of residential first mortgage loans is defined as A[a] person who directly or indirectly negotiates or places mortgage loans for others in the primary market for consideration.⁶ A mortgage broker is required to be licensed under section 3 of the MBBA to operate in the Afirst mortgage loan business⁶ as that term is defined in section 2 of the MBBA, which provides that A[a] person is deemed to be engaged in the first mortgage loan business in this Commonwealth if that person advertises, causes to be advertised, solicits, negotiates or arranges in the ordinary course of business, offers to make or makes more than two first mortgage loans in a calendar year in this Commonwealth, whether directly or by any person acting for his benefit.⁷

Similarly, pursuant to section 2 of the SMLA, a secondary mortgage loan broker⁸ of residential secondary mortgage loans is defined as A[a] person who in the ordinary course of business, for a fee, directly or indirectly negotiates or arranges for others a secondary mortgage loan.⁸ For purposes of the SMLA, a person is deemed to be Aengaged in the secondary mortgage loan business in this Commonwealth⁸ if such person Acauses to be advertised, solicits, negotiates or arranges in the ordinary course of business, offers to make or makes more than two secondary mortgage loans in a calendar year in this Commonwealth....⁹

A Acredit services organization¹⁰ is defined in section 2 of the CSA as a person who provides any of the following services, in return for the payment of money or other valuable consideration: (i) improving a buyer's¹⁰ credit record, history or rating; (ii) obtaining an extension of credit¹¹ for a buyer; (iii) providing advice or assistance to a buyer with regard to either subparagraph (i) or (ii), subject to certain exceptions.¹²

⁶ 63 P.S. ' 456.02.

⁷ 63 P.S. ' 456.02. See also 63 P.S. ' 456.03(b) (regarding persons not required to be licensed in order to conduct some or all facets of the first mortgage loan business in Pennsylvania).

⁸ 7 P.S. ' 6602.

⁹ 7 P.S. ' 6603(a)(5). See also 7 P.S. ' ' 6603(a)(2), (a)(3), and (b), 6624 (regarding persons not required to be licensed in order to conduct some or all facets of the secondary mortgage loan business in Pennsylvania).

¹⁰ A Abuyer¹⁰ is defined in section 2 of the CSA as A[a] natural person who is solicited to purchase or who purchases the services of a credit services organization.¹⁰ 73 P.S. ' 2182.

¹¹ AExtension of credit¹¹ is defined in section 2 of the CSA as A[t]he right to defer payment of debtor or to incur debt and defer its payment, offered or granted primarily for personal, family or household purposes.¹¹ 73 P.S. ' 2182.

¹² 73 P.S. ' 2182.

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The Department has considered the ability of a licensed mortgage broker under the MBBA and a licensed secondary mortgage loan broker under the SMLA to engage in activities that fall within the CSA's definition of credit services organization, and has reached the conclusions stated below.

Conclusion: It is the Department position that a licensed first mortgage broker or secondary mortgage loan broker may provide the services of a credit services organization as an incidental function to soliciting, negotiating, and arranging a mortgage loan under the MBBA or SMLA, notwithstanding the credit services organization provisions in the CSA, PROVIDED the mortgage broker does not charge or accept a separate fee for such services AND accepts not more than the consideration or fee permitted by the MBBA or SMLA for brokering a mortgage loan.

The Department further finds that (i) improving a buyer's credit record, history or rating; (ii) obtaining an extension of credit for a buyer; or (iii) providing advice or assistance to a buyer with regard to (i) or (ii) are activities that may be included in the ordinary course of business of a licensed first mortgage broker or licensed secondary mortgage loan broker.

Notwithstanding that there does not appear to be an exception for mortgage brokers from the credit services organization provisions of the CSA, the Department concludes that part of the business that a first mortgage broker or secondary mortgage loan broker is authorized to engage in when issued such licenses by the Department respectively under the MBBA or SMLA may and oftentimes necessarily does include discussions with the prospective loan customer that may be construed as or actually constitute the providing of advice or assistance regarding how that prospective loan customer may improve his or her credit record, history or rating, or obtain an extension of credit. Accordingly, it is the Department's position that the MBBA and SMLA respectively authorize licensed first mortgage brokers and licensed secondary mortgage loan brokers to provide the services

stated in the CSA's definition of credit services organization as an incidental function to and therefore as a fundamental part of engaging in the first mortgage loan business and secondary mortgage loan business in this Commonwealth PROVIDED the first mortgage broker or secondary mortgage loan broker does not accept a separate fee specifically for performing credit services organization services.

The Department does generally recognize that a first mortgage broker or secondary mortgage loan broker licensed respectively under the MBBA or SMLA would be required to comply with the credit services organization provisions of the CSA if that person, in return for the payment of money or other valuable consideration, accepted a fee specifically for performing credit services organization services, meaning (i) improving a buyer's credit record, history or rating; (ii) obtaining an extension of credit for a buyer; (iii) providing advice or assistance to a buyer with regard to either (i) or (ii).

It is noted, for reasons including that it is not the Department but is the Pennsylvania Office of Attorney General that has enforcement authority with regard to the CSA, that no statement pertaining to the CSA in

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this letter is binding on the Pennsylvania Office of Attorney General.

The Department's analysis is based upon the facts as stated in this letter. Any change in the facts could result in an amendment or reversal of the Department's position. This letter has been authorized by the appropriate Department personnel and constitutes a duly authorized statement of the Department's position regarding the issues discussed herein. This letter may not be relied upon or construed as constituting legal advice.

Sincerely,

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Chief Counsel

RSE:jee

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