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November 22, 1994

RE: Supervised Lender Licenses and Mortgage Loans

This letter is in response to your November 10, 1994 letter concerning whether your company must obtain a license in order to originate and/or service mortgage loans. The loans are either purchased from its parent bank or other mortgage lenders. Your company sells the loans to institutional investors and either retains servicing rights or sells those rights as well.

A "consumer loan" is one made to an individual for personal, family or household purposes and payable in more than four installments or on which a finance charge is imposed.¹ A consumer loan is subject to the Uniform Consumer Credit Code ("UCCC") if it is made in this state, that is, if the written agreement evidencing the debt is received by the lender in Colorado.² However, traditional first mortgage loans made to purchase a dwelling, or to refinance a first mortgage loan to purchase a dwelling, are exempt from the definition of "consumer loan" and need not comply with most UCCC provision with the exception of disclosures of the cost of credit. Second mortgage and other junior lien loans, as well as first mortgages made on homes owned free and clear, are subject to the UCCC if the annual percentage rate is more than 12 percent.³

Under the UCCC, a consumer loan in excess of 12% APR can only be

¹ Section 5-3-104, C.R.S.

² Section 5-1-201, C.R.S.

³ Section 5-3-105, C.R.S.

made by a "supervised lender."⁴ A supervised lender must either obtain a supervised lender's license from this office or be exempt from licensing because it is a "supervised financial organization."⁵ A "supervised financial organization" is a depository institution chartered by the United States or the State of Colorado.⁶ A supervised lender also includes an assignee of a supervised lender who takes assignment of the supervised loan and either undertakes direct collection of, or enforces rights arising under, the loan.⁷

Your letter does not indicate whether the mortgage loans your company originates or purchases are first mortgage loans to purchase dwellings which would be exempt from UCCC licensing requirements. Because your company is an approved HUD mortgagee, I assume these may be first mortgage loans to acquire a dwelling. If so, your company need not obtain a supervised lender's license in order to originate, purchase, or service the mortgage loans.

If, however, some of the loans made or purchased are second mortgages over 12% APR or other mortgage loans subject to the UCCC, your company must obtain a supervised lender's license. While your company is a wholly owned subsidiary of a savings and loan association, your corporation is not a depository taking institution subject to supervision by the federal government or this State and therefore not a supervised financial organization.

When your company does not originate the mortgage loans, it takes assignment of the loans and in some instances retains servicing rights. If these are supervised loans subject to the UCCC, your company may not always directly collect these loans if it contracts out servicing rights. However, I would assume you retain the ability to enforce rights arising under the loans and would then be a supervised lender by virtue of the assignment.

If the company buys mortgage loans and then sells the loans to others with no retention of servicing or enforcement rights, it would not be a supervised lender nor require a license. However, the institutional investors to whom the loans are sold might need to obtain a license if the mortgage loans are subject to the UCCC, if the investor is not a supervised financial organization, and if the assignment includes servicing or enforcement of the loan obligations.

⁴ Section 5-3-501, C.R.S.

⁵ Section 5-3-502, C.R.S.

⁶ Section 5-1-301(17), C.R.S.

⁷ Section 5-3-202(2), C.R.S.

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Since your letter did not contain sufficient detail for me to conclusively determine whether the mortgages are subject to the UCCC, this response is not written pursuant to the UCCC's "safe harbor" provision.⁸ However, it explains our interpretation of the UCCC and should be of assistance to you. Please feel free to contact me if you have further questions about this matter.

Sincerely,



LAURA E. UDIS
Administrator
Uniform Consumer Credit Code
(303) 866-4494

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⁸ See § 5-6-104(4), C.R.S.